

Exhibit 2

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4

5 IN RE:)

6 CUSTOMS AND TAX ADMINISTRATION OF)
7 THE KINGDOM OF DENMARK)
8 (SKATTEFORVALTNINGEN) TAX REFUND)
9 SCHEME LITIGATION)

10

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C O N F I D E N T I A L

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15 REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL
16 EXAMINATION OF
17 BRUCE DUBINSKY

18

19 DATE: March 29, 2022

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25 REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 2

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6 TRANSCRIPT of the videotaped deposition
7 of the expert witness, called for Oral Examination
8 in the above-captioned matter, said deposition being
9 taken by and before MICHAEL FRIEDMAN, a Notary
10 Public and Certified Court Reporter of the State of
11 New Jersey, via WEBEX, ALL PARTIES REMOTE, on March
12 29, 2022, commencing at approximately 9:04 in the
13 morning.

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

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10 ALSO PRESENT: JOSE RIVERA, Videographer

11 ROBERT KLUGMAN

12 HELENE SCHWIERING

13 DANIEL ALDRICH

14 ROGER WARIN

15 ZACHARY SCHREIBER

16 DANIELLA DALLA

17 CHRISTIAN B□LOW

18 ANTHONY ALMEIDA

19 AC EGHOLM

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 8

1	I N D E X	
2	WITNESS NAME	PAGE
3	BRUCE DUBINSKY	
4	Examination By:	
5	By Mr. Bongiorno	13
6	By Mr. LoPiccolo	191
7	* * * * *	
8		
9	E X H I B I T S	
10	Exhibit No.	PAGE
11	Exhibit 5200-5203	Dubinsky initial report, rebuttal report, reply report, revised list of prior testimony
12		20
13		
14	Exhibit 5209	Dubinsky declaration
15	Exhibit 5210	WH_MDL 96977 - 96986
16	Exhibit 5211	WH_MDL 265119 - 265129
17	Exhibit 5225	Investor publication
18	Exhibit 5227	SEC report, 10/14/21
19	Exhibit 5217	MPSKAT 75372 - 75374
20	Exhibit 5218	MPSKAT 88402 - 88403
21	Exhibit 5219	MPSKAT 182365 - 182367
22	Exhibit 5220	FGC Securities document
23	Exhibit 5221	SEC investor bulletin
24	Exhibit 5222	WH_MDL 32533 - 32543
25		

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 9

1 E X H I B I T S
2 (CONTINUED)

3 Exhibit No.	4	5 PAGE
4 Exhibit 5223	5 London Stock Exchange 6 rules	6 175
5 Exhibit 5224	6 Investor.gov document	7 182
6 Exhibit 5228	7 Determination of 8 beneficial owner	8 186
7 Exhibit 5229	8 Elysium 5315871	9 192

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16
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22
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25

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 10

1 - - -
2 Deposition Support Index
3 - - -
4
5 Direction to Witness Not to Answer
6 Page Line Page Line Page Line
7 None
8
9 Request for Production of Documents
10 Page Line Page Line Page Line
11 None
12
13 Stipulations
14 Page Line Page Line Page Line
15 None
16
17 Questions Marked
18 Page Line Page Line Page Line
19 None
20
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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 11

1 THE COURT REPORTER: My name is
2 Michael Friedman, a Certified Shorthand
3 Reporter. This deposition is being held
4 via videoconferencing equipment.

5 The witness and reporter are not in
6 the same room. The witness will be
7 sworn or affirmed in remotely pursuant
8 to agreement of all parties. The
9 parties stipulate that the testimony is
10 being given as if the witness was sworn
11 in person.

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 12

1 THE VIDEOGRAPHER: We are now on
2 record. This is the remote
3 video-recorded deposition of Bruce
4 Dubinsky.

5 Today is Tuesday, March 29, 2022.
6 The time is now 9:04 a.m. in the Eastern
7 time zone.

8 We're here in the matter of In Re,
9 Customs and Tax Administration of the
10 Kingdom of Denmark Et Al. All counsel
11 have been noted on record.

12 My name is Jose Rivera, remote
13 video technician on behalf of Gregory
14 Edwards LLC. At this time, will the
15 reporter, Michael Friedman, on behalf of
16 Gregory Edwards LLC, please swear in the
17 witness.

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 13

1 B R U C E D U B I N S K Y,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:
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6

7 EXAMINATION BY MR. BONGIORNO:

8 Q Good morning, Mr. Dubinsky.
9 Can you hear me okay?
10 A I can, Mr. Bongiorno, yeah.
11 Good morning.
12 Q Okay. As you know, my name is Mike
13 Bongiorno and I represent Mr. Richard
14 Markowitz, Ms. Jocelyn Markowitz, and various
15 pension plans in this action, and I'll be
16 asking you questions today.

17 I know that you've given your
18 deposition before, Mr. Dubinsky.

19 Have you ever done so remotely like
20 we're doing it today?

21 A I have, yes.

22 Q Okay. So, obviously, you know
23 since we're not in the same room, then it's
24 going to be even more difficult than it is
25 when we're -- when we are in the same room

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 14

1 not to talk over each other, but we'll do our
2 best, and, you know, we'll try to avoid that.
3 It's inevitable at times but we'll do our
4 best.

5 And I'm sure you know this, but if
6 you have trouble understanding one of my
7 questions, either because of its content or,
8 obviously, because you can't hear me for
9 whatever reason, just say so before
10 answering.

11 Okay?

12 A I will do that, yes.

13 Q Okay. And you know this, too, but
14 just to remind you, if you need a break, let
15 the court reporter know, let me know, and
16 we'll take a break as long as there's no
17 question pending, unless there's some
18 specific reason to do that. And I'll try to
19 take a break every hour, a little over an
20 hour or so anyway.

21 Do you have a document binder in
22 front of you that was provided to you this
23 morning?

24 A I do, yes.

25 Q Okay. Did you bring any other

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 15

1 documents with you today?

2 A I did not.

3 Q Okay. And where are you physically
4 located today for this deposition?

5 A At the offices of Hughes Hubbard
6 down in New York City, lower Manhattan.

7 Q And did you prepare for your
8 deposition today?

9 A Yes, I have.

10 Q Okay. What did you do to prepare?

11 A I reviewed my reports that I issued
12 in this case. There were three reports that
13 I've issued in this case.

14 I reviewed documents related to
15 those reports. I reviewed the reports of
16 Dr. Carr. Dr. Carr had issued, I believe,
17 three reports in this case, and that's
18 basically going through documents in that
19 regard.

20 Q What types of documents did you go
21 through?

22 A I went back through things like --

23 MR. WEINSTEIN: Let me just -- I'll
24 object on privileged grounds. You can
25 give general categories of documents,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 16

1 but I just caution you to not get into
2 specifics. To the extent that any
3 review was done with or at the direction
4 of counsel.

5 A So, in general, just looking at my
6 report, the footnotes where I footnote
7 reference certain documents in general. That
8 might have been trade confirmations, things
9 related to the matter in the case.

10 Q Did you review any deposition
11 transcripts in order to prepare for today?

12 A I don't recall if I went back
13 through any of the deposition transcripts.
14 Again, I may have, but nothing is jumping out
15 in particular.

16 There were transcripts that were --

17 Q Did you --

18 A There were transcripts listed in my
19 report. Those would have the ones if I went
20 back to those that I looked at.

21 Q What about -- you know who Mr. Wade
22 is.

23 Correct?

24 A Yes, generally. I've never met the
25 man, but I know the name.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 17

1 Q You know he's an expert in this
2 case, has been designated as an expert in
3 this case?

4 A That's my understanding.

5 Q Okay. Have you seen his deposition
6 transcript?

7 A I have not.

8 Q Okay. When were you first
9 contacted about this case?

10 A I believe it was April 2021, last
11 year.

12 Q What has your total compensation
13 been so far for this engagement?

14 A I believe the fees that have been
15 billed to date are about \$1.5 million.

16 Q Is anyone else working with you on
17 this matter?

18 A Yes, I do have associates that are
19 working with me on this matter.

20 Q Who?

21 A There are basically three main
22 associates working with me on this matter; a
23 gentleman named John Emperiali, Rachel
24 Altman, and Caitlyn Thomas.

25 Q Okay. Can you tell me what they

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 18

1 have done in this matter?

2 A All three of them had different
3 roles, working under my direction and
4 supervision, to go through documents, to
5 review materials in the case, to gather
6 information for me, and assist me just like
7 they would on any case.

8 Q So are these folks who work with
9 you regularly?

10 A They are. So just to clarify, I
11 had left my company, basically gone on senior
12 status from my prior company, which was
13 called Duff & Phelps, it's now known as
14 Kroll.

15 And so I'd gone on senior status
16 last year on April 1st, basically retired,
17 and I set up my own consulting company called
18 Dubinsky Consulting LLC and I have an
19 arrangement back with Kroll where I can
20 utilize the staff that used to work for me at
21 the firm on cases if I need assistance.

22 Q And are the three people that you
23 just mentioned, are they employees of Kroll?

24 A They are, yes.

25 Q And they are folks that you worked

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 19

1 with when you were at that company?

2 A Correct.

3 Q And you continue to work with them
4 now that you've established your own entity.

5 Is that right?

6 A Correct.

7 Q In connection with this assignment,
8 did you ask to interview anyone at SKAT?

9 A I did not.

10 Q Okay. Have you ever spoken to
11 anyone at SKAT?

12 A No, I have not.

13 Q Did you review any notes of any
14 interviews that anybody else conducted with
15 anyone at SKAT?

16 A No, I have not.

17 Q And you mentioned that you reviewed
18 deposition transcripts.

19 Are all the deposition transcripts
20 that you reviewed listed in your reports?

21 A That's correct, yes.

22 Q Okay. I want to mark, from your
23 notebook in front of you, your reports and
24 your list of prior testimony.

25 MR. BONGIORNO: I'd ask that they

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 20

1 be marked -- Tab 5200 is your initial
2 report as revised. 5201 will be your
3 rebuttal report. 5202 will be your
4 reply report, and 5203 will be your
5 revised list of prior testimony.

6 (Whereupon the above mentioned was
7 marked for identification.)

8 A Okay. I see those.

9 Q Okay. And have you reviewed --

10 MR. WEINSTEIN: I'm sorry,
11 Mr. Bongiorno. If we could just make
12 clear that the reports as marked do not
13 have the attachments to them. Is that
14 correct? At least the copies we were
15 provided don't. So I just want to make
16 sure what's been marked is clear, that
17 it's the reports but not the
18 attachments.

19 MR. BONGIORNO: Okay.

20 MR. WEINSTEIN: Is that right? Are
21 we on the same page?

22 MR. BONGIORNO: Yes.

23 MR. WEINSTEIN: Okay.

24 Q And Mr. Dubinsky, I believe you
25 said you reviewed these reports, your three

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 21

1 reports again to prepare for the deposition.

2 Is that right?

3 A That's correct.

4 Q Okay. When you reviewed them in
5 preparation for this deposition, did you
6 identify anything that was inaccurate in the
7 reports?

8 A No, I did not.

9 Q So there isn't anything in those
10 reports that you want to correct today.

11 Is that right?

12 A That is correct. There's nothing
13 that has come to my attention that would be
14 incorrect.

15 Q Are you working on any -- anything
16 additional with regard to this case at the
17 present time?

18 A No, I'm not.

19 Q Do you have any additional opinions
20 beyond those contained in your reports on
21 which you plan to testify in this matter?

22 A No. I would say this. The
23 opinions, the basis for my opinions are set
24 forth in the three reports; the initial
25 report, the rebuttal report, and my reply

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 22

1 report.

2 To the extent there are -- I know
3 Mr. Carr -- or Dr. Carr's deposition is
4 coming up. To the extent that he may say
5 something or bring up new ideas or opinions,
6 that I'll reserve the right to comment on
7 those.

8 But sitting here today, I'm not
9 aware of anything that would be additional.

10 Q Okay. And you said you reviewed
11 Dr. Carr's three reports.

12 A Correct?

13 Q Correct.

14 Q Okay. And I believe you have those
15 in your binder in front of you as well. At
16 Tab 5100 is Carr's initial report. 5101 is
17 his rebuttal report, and 5102 is his reply
18 report.

19 Q Do you have those in front of you?

20 A I do, yes.

21 Q Okay.

22 MR. BONGIORNO: They were marked as
23 Carr's deposition -- I'm sorry. Carr's
24 deposition, that hasn't happened yet.

25 They were marked at Wade's

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 23

1 deposition.

2 Q Prior to this litigation, had you
3 ever heard of Dr. Carr?

4 A No, I have not.

5 Q Would you agree, having reviewed
6 his credentials and his reports, that he's
7 well-qualified in the areas of accounting?

8 MR. WEINSTEIN: Objection to form.

9 A Again, I'm not here to opine on his
10 credentials. He has his credentials, I think
11 they'll speak for themselves.

12 But generally, he has accounting
13 credentials and I'll leave it at that.

14 Q What about financial economics? Do
15 you have a view as to whether or not he's
16 qualified in that area?

17 MR. WEINSTEIN: Objection to form.

18 A No, I think that's -- you're asking
19 for a legal conclusion. The judge would have
20 to determine that in this case.

21 He does have some experience in
22 that area, so I would leave it at that.

23 Q You don't have any reason to doubt
24 his expertise in those fields, though, do
25 you?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 24

1 MR. WEINSTEIN: Objection to form.

2 A Again, I'm not here to comment on
3 his expertise in any one field.

4 Q You've been designated as an expert
5 over a hundred times.

6 Is that right?

7 A That's correct.

8 Q Okay. And you've testified over 75
9 times.

10 Is that right?

11 A I think at trial, I think it's
12 about 80 times now, and deposition more than
13 that, yes. But many times.

14 Q When is the last time you testified
15 in a deposition?

16 A In a deposition? I would have to
17 go back and look. The last trial was a
18 couple weeks ago in the Southern District
19 here in New York.

20 Q And what case was that?

21 A That was the -- it was a Madoff
22 related case. The trustee was suing a
23 company called RAR, I believe. I'd have to
24 look.

25 I think it was RAR Entrepreneurial

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 25

1 Fund Limited.

2 Q And in many of the cases that
3 you've testified in, those were about alleged
4 fraud.

5 Right?

6 A I've testified in quite a few cases
7 about fraud or alleged fraud or related
8 issues. I've also testified on cases on
9 damages, commercial damages, valuation
10 issues, accounting issues, and a variety of
11 other SEC topics, investment advisory topics.

12 So it was quite a wide range of
13 expertise.

14 Q But many of them were about fraud,
15 weren't they?

16 A Yes. Many of the cases have been
17 about fraud, yes.

18 Q And in those cases, in many of
19 them, you found that there was fraud.

20 Correct?

21 A Well, I'd have to go back. I don't
22 think that I've concluded in court that
23 someone committed fraud.

24 That's a legal finding. That would
25 be up to the trier of fact. I think what --

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 26

1 I've either testified about either red flags
2 of fraud, indicia of fraud, fictitious nature
3 of transactions.

4 I think the ultimate findings, I
5 mean, committing fraud, is a legal finding.

6 Q Okay. So you don't have any
7 opinion as to whether or not there was any
8 fraud in this case, I take it.

9 Right?

10 A Again. I'm not opining on legal
11 issues. I think the judge or jury in this
12 case would have to opine on that.

13 That's why I haven't opined on the
14 guilt of any person or party in that regard.

15 Q Okay. I'm not asking about guilt
16 or innocence, sir. It's not a criminal case.

17 I'm asking whether or not you have
18 an opinion in this case as to whether there
19 was any fraud?

20 A Again, I think that's a legal
21 finding. I think my report speaks for
22 itself.

23 I concluded that there were
24 fictitious transactions, that stock didn't
25 exist, dividends weren't paid. But I think

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 27

1 the ultimate conclusion of whether there was
2 fraud will be up to the judge or jury in this
3 case.

4 Q Okay. I understand your report
5 speaks for itself, sir, but this is a
6 deposition so I'm going to be asking you
7 questions about your report.

8 Okay? You understand that, right?

9 A Yes.

10 Q Okay. And you just said a moment
11 ago that you're not reaching any legal
12 conclusions. You're not an attorney.

13 Right?

14 A That's correct. I'm not.

15 Q Are you offering any opinion in
16 this case about whether the plans were the
17 beneficial owners of the dividends?

18 MR. WEINSTEIN: Objection to form.

19 A Again, I think that's asking for a
20 legal conclusion, and I'm not issuing that
21 legal conclusion.

22 Q Okay. And so you're not offering
23 any opinion, either about whether the plans
24 were the beneficial owner of dividends under
25 Danish tax law.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 28

1 Right?

2 MR. WEINSTEIN: Objection, form.

3 A Again, I'm not opining anything as
4 to Danish tax law. I'm not a Danish tax law
5 expert and not being offered as one.

6 Q You're not an expert on what it
7 means to be the beneficial owner of dividends
8 under Danish tax law.

9 Right?

10 A I would agree with you.

11 Q Okay. And you're not offering any
12 opinion about legal ownership under Danish
13 law.

14 Right?

15 A I would agree with you. That would
16 call for a legal conclusion.

17 Q And similarly, you're not offering
18 an opinion about legal ownership under U.S.
19 law, then.

20 Right?

21 A I would agree with you again. That
22 would call for a legal opinion.

23 I'm not a lawyer.

24 Q Okay. And you're not offering an
25 opinion about the intent of the defendants in

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 29

1 this case, are you?

2 A No, I'm not.

3 Q And you're also not offering an
4 opinion about whether SKAT reasonably relied
5 on the reclaim applications at issue in the
6 case.

7 Right?

8 A That is correct. I am not.

9 Q Okay. Mr. Dubinsky, have you ever
10 worked as a trader?

11 A I have not worked as a trader, no.

12 Q So you don't have any experience in
13 trading Danish securities.

14 Is that a fair statement?

15 A I would agree with you, yes.

16 Q Have you ever engaged in dividend
17 arbitrage trading?

18 A I have not.

19 Q Do you have any experience in
20 arranging structured transactions?

21 MR. WEINSTEIN: Objection to form.

22 A I have not. I'm just trying to
23 think.

24 I have not been involved in
25 arranging structured transactions.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 30

1 Q You're not an expert in trade
2 clearing, are you?

3 A I wouldn't consider myself an
4 expert in trade clearing. I have some
5 experience in looking at that aside from this
6 case, but I wouldn't consider myself an
7 expert in trade clearing.

8 Q What about trade settlement? Do
9 you consider yourself an expert in trade
10 settlement?

11 A Again, I have some experience in
12 that area aside from this case, but I
13 wouldn't hold myself out as an expert in
14 that.

15 Q Have you ever worked at a financial
16 firm that was a member of the New York stock
17 exchange?

18 A I don't believe so, no.

19 Q Have you ever worked at a firm that
20 was a member of the London stock exchange?

21 A No.

22 Q Have you ever worked at a firm that
23 was regulated by FINRA?

24 A Yes.

25 Q What firm was that?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 31

1 A Several firms. One was Bridgewater
2 Financial Associates. One was called SOL,
3 S-O-L, Capital, and one was Duff & Phelps.
4 It was a predecessor to Kroll.

5 Q What was the second one you
6 mentioned?

7 A SOL Capital, S-O-L Capital.

8 Q What did you do at Bridgewater?

9 A I was a registered investment
10 advisor representative for Bridgewater and so
11 I had high net worth clients that I did
12 investment advisory services for, and
13 arranged their portfolios in investments.

14 Q When did you work at Bridgewater?

15 A That would have been late '90s,
16 early 2000s, in that time period.

17 Q What did you do at SOL Capital?

18 A Same thing. I had -- this was
19 during the time I had an accounting practice.
20 I have a CPA and I had high net worth
21 individual clients.

22 And I got licensed as an IRA rep
23 and SOL was an investment advisor registered
24 with FINRA, regulated with FINRA, and I did
25 the same thing. I advised high net worth

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 32

1 individual clients and pension plans,
2 retirement plans on investments.

3 Q And at Duff & Phelps, you did this
4 type of work that you do now.

5 Is that right?

6 A No, I did not. So when I joined
7 Duff & Phelps, I let my license lapse at that
8 point because I was not doing that work
9 anymore.

10 And just to maintain the
11 registration requirements was too much red
12 tape. So I let the license lapse at that
13 point.

14 Q So what did you do at Duff &
15 Phelps?

16 A I was a managing director at Duff &
17 Phelps in their disputes and investigation
18 practice, and so I handled everything from
19 investigations to commercial disputes, expert
20 witness work.

21 That was my role at Duff & Phelps.

22 Q Okay. And in this matter, you were
23 retained to do a forensic accounting of the
24 cash flows of the tax refund payments paid
25 out by SKAT.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 33

1 Is that right?

2 A Among other things, yes, that was
3 part of what I was asked to do.

4 Q Okay. And your forensic accounting
5 was of the payments that allegedly went to
6 Solo clients.

7 Right?

8 A That portion of the work was, yes,
9 looking at the refund claim payments paid by
10 SKAT and the money flow from those payments,
11 where did the money go.

12 Q You did not do a forensic
13 accounting of SKAT, did you?

14 A No, I did not.

15 Q Okay. You did not do a forensic
16 accounting to assess whether the withholding
17 tax associated with the refund claims in this
18 case was actually paid to SKAT.

19 Right?

20 A No, I did not.

21 Q Did you develop a view of whether
22 SKAT collected dividend withholding tax from
23 any of the sellers in the trades associated
24 with this case?

25 MR. WEINSTEIN: Objection to form.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 34

1 A I'm not sure what you mean, did I
2 develop a view. It's just my basic
3 understanding that an issuer, when it pays a
4 dividend in Denmark, would submit the
5 withholding directly to SKAT.

6 That was my understanding.

7 Q But you didn't develop a view as to
8 whether SKAT collected dividend withholding
9 tax from any of the sellers in the trades in
10 this case?

11 MR. WEINSTEIN: Objection to form.

12 A Which sellers are you talking
13 about? I'm confused.

14 Q You're aware that -- well, you
15 analyzed various transactions associated with
16 the opinions that you gave in this case.

17 Right?

18 A Correct.

19 Q And those transactions involved
20 numerous parties.

21 Correct?

22 A Yes.

23 Q And some of those parties were
24 sellers.

25 Right?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 35

1 MR. WEINSTEIN: Objection to form.

2 A Well, again, if you could be more
3 specific as to which ones you're talking
4 about?

5 Q You don't know what I mean when I
6 talk about sellers in a transaction in this
7 case?

8 MR. WEINSTEIN: Objection to form.

9 Q You're unable to think of any?

10 A Again, I just want to make sure
11 we're on the same page. If you give me a
12 specific, then I can answer your question.

13 Q You can't think of the name of a
14 single seller in a single transaction in this
15 case?

16 MR. WEINSTEIN: Objection to form.

17 A Well, again, I'm not here to go
18 back and forth.

19 Are you talking about the purported
20 short sellers? Is that what you're asking?

21 I'm just trying to get
22 clarification, Michael.

23 Q Sure. Short sellers, folks who
24 sold to the pension plans?

25 MR. WEINSTEIN: Objection to form.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 36

1 A So what I would say is -- and maybe
2 we can agree for the deposition -- but when
3 you talk about sellers, I'm going to talk
4 about purported sellers. And yes, so for
5 instance, DDC Cayman would be a purported
6 short seller.

7 So that's how I would define that.

8 Q Okay. That's fine. And my
9 question to you is whether -- we'll use DDC
10 Cayman -- did you develop a view as to
11 whether SKAT collected dividend withholding
12 tax from DDC Cayman?

13 MR. WEINSTEIN: Objection to form.

14 A My view would be that withholding
15 tax was paid -- should have been paid by the
16 issuer of the Danish security directly to
17 SKAT as withholding tax, and it wouldn't have
18 come directly from DDC Cayman in that regard.

19 So that would be my view, if that's
20 what you're asking.

21 Q Okay. Did you look to see how much
22 any of these issuers paid to SKAT in dividend
23 withholding tax?

24 A No, I didn't. Let me just clarify
25 and see if I understand the question.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 37

1 For instance, like Novo Nordisk,
2 are you asking if I went back to see how much
3 money Novo Nordisk, for a certain dividend
4 that was declared by that company, by that
5 issuer, paid to SKAT on a particular date?

6 Is that what you're asking?

7 Q That's my question, yes.

8 Did you look to see how much any of
9 these issuers paid in dividend withholding
10 tax?

11 MR. WEINSTEIN: Objection to form.

12 A No, I did not.

13 Q So you don't know either way how
14 much any of these issuers paid in withholding
15 tax in connection with any of the dividends.

16 Is that right?

17 MR. WEINSTEIN: Objection.

18 A That is correct. To SKAT.

19 Q In working on your reports, you
20 reviewed documents that you understood came
21 from Solo Capital.

22 Right?

23 A Correct.

24 Q Okay. And you understand that
25 Solo Capital is not a party to this

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 38

1 litigation?

2 A That's my understanding to this
3 particular litigation, yes.

4 Q Okay. You had access to a set of
5 documents that came from an entity called
6 Elysium Global.

7 Right?

8 A Yes.

9 Q Okay. And do you have any
10 understanding of what those documents
11 represent?

12 A I think in general, my
13 understanding was those were documents that
14 Solo had maintained that was part of a Solo
15 umbrella of companies. So there were a lot
16 of different documents in that database.

17 But they were business records
18 related to Solo and various entities under
19 Solo's control.

20 Q Okay. Why don't you open up your
21 report, your initial report, which is
22 Exhibit 5200.

23 A Okay.

24 Q And I want you to go to Footnote 5
25 on a Page 8.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 39

1 Okay?

2 A Okay.

3 Q I'm going to read the last couple
4 of sentences of that footnote.

5 "Further, I have been informed that
6 a hard drive potentially containing Solo
7 Capital and/or related entities' documents
8 has been found, but is encrypted and cannot
9 be accessed. I do not believe that these
10 facts impact the conclusions of this report
11 and reserve the right to supplement this
12 report if/when more documents become
13 available."

14 Do you see that?

15 A I do see that, yes.

16 Q Did I read that correctly?

17 A You did. That was half of the
18 footnote, but that portion you did read
19 correctly.

20 Q After you submitted your reports,
21 did you receive any additional Solo
22 documents?

23 A Not that I recall, no.

24 Q Based on the statement in this
25 footnote, is it fair to say that there are

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 40

1 documents from Solo Capital that you did not
2 review?

3 A Yes, that's correct. I mean, the
4 encrypted drive, as I said down there. And
5 then there was a -- at the beginning of that
6 footnote it also talks about -- I think
7 there's a privilege review that was ongoing
8 and that those documents had not been
9 produced yet.

10 Q And you don't know what's in the
11 documents on the encrypted hard drive.

12 Right?

13 A That is correct.

14 Q There could be anything on that
15 hard drive.

16 Right?

17 A Theoretically, yes.

18 Q You don't have any idea if that
19 hard drive contains Solo records reflecting
20 holdings of shares in Danish companies.

21 Right?

22 A Not having access to it, I don't
23 know what's on there, but I wouldn't expect
24 to see shares of Danish companies
25 being -- the documents on that encrypted

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 41

1 drive when I haven't seen them anywhere else.
2 In the voluminous amount of records that have
3 been produced in this case, it wouldn't make
4 sense to me.

5 But again, I don't know what's on
6 there. I can't get into that encrypted
7 drive.

8 I don't think anybody can.

9 Q Okay. So because you haven't seen
10 them anywhere else, you assume they're not on
11 this encrypted hard drive either.

12 Is that an assumption you made?

13 A That's an assumption that I've
14 made, that there was a voluminous amount of
15 records made available to me. There were --
16 when you look at those records in conjunction
17 with the information that came from the
18 supposed sub-custodians, from J.P. Morgan,
19 SEB and Sofgen, there's nothing that would
20 lead me to believe that there would be
21 documents from -- that would show holdings of
22 Danish securities that relate to the Solo
23 transactions on that encrypted drive.

24 Q If the hard drive contained records
25 of holdings in Danish securities at

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 42

1 Solo Capital, would that affect your
2 conclusions?

3 MR. WEINSTEIN: Objection to form.

4 A Well, if there are documents from
5 sub-custodians, knowing that the Danish
6 securities were actually held in custodial --
7 you know, in custody, then sure, that would
8 affect my opinion.

9 But I don't see how that's
10 possible. And sub-custodians that were
11 identified by Mr. Shah and Solo lawyers at
12 Reed Smith indicated that they didn't have
13 any holdings relating to these transactions.

14 So I don't know beyond that what
15 could be on that hard drive.

16 Q You don't know if that hard drive
17 contains evidence of additional
18 sub-custodians that Solo used for Danish
19 securities, do you?

20 MR. WEINSTEIN: Objection, asked
21 and answered.

22 A Well, again, I mean, it's -- that's
23 kind of obvious. If I can't get into the
24 hard drive, I don't know what's on there.

25 But I would think that Mr. Shah, in

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 43

1 the U.K. proceedings, would have had every
2 reason to identify proper sub-custodians
3 holding these shares because he was being
4 accused that these transactions were
5 fraudulent or didn't properly exist. That
6 hasn't -- you know, he identified what he
7 identified.

8 So I don't know -- again, I don't
9 know what's on that hard drive, but there's
10 nothing to lead me to believe that in the
11 evidence I have seen in this case that there
12 would be anything of such nature on that hard
13 drive.

14 Q So you're relying in part on what
15 Mr. Shah said in order to develop your view
16 in that regard?

17 Is that a fair statement?

18 A I think that's a fair statement in
19 part. Mr. Shah, Reed Smith had indicated
20 when they responded to the FCA's
21 investigation that Sofgen was the custodian
22 during the relevant period when they were
23 referencing on their letter what the relevant
24 period was.

25 So I think it's the totality of the

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 44

1 information. I would have thought that --
2 that in all of the other documents that were
3 made available, there would have been some
4 mention of other sub-custodians that would
5 lead me to believe, you know, if there was,
6 that maybe something was on that hard drive,
7 and there's nothing that's come to my
8 attention in that regard.

9 Q Do you know how much information is
10 contained on the hard drive?

11 A No. Again, I don't have custody of
12 the hard drive. And I don't know what's on
13 the hard drive.

14 I think I've answered that several
15 times.

16 (Whereupon a discussion was held
17 off the record.)

18 Q Mr. Dubinsky, I wasn't asking you
19 in that question if you knew what was on the
20 hard drive. The question was if you knew how
21 much information was on the hard drive.

22 Do you know how much information is
23 on the hard drive?

24 MR. WEINSTEIN: Objection to form.

25 A I do not.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 45

1 Q I didn't hear the answer. I'm
2 sorry.

3 A I said I do not.

4 Q Okay. Mr. Dubinsky, did you
5 develop an opinion as to whether or not the
6 trades that you reviewed in this case were
7 fake?

8 A Yes, I did.

9 Q And your opinion is that they were
10 fake.

11 Right?

12 A That they were fictitious, that
13 there was no stock backing up the trades.

14 MR. BONGIORNO: I'm sorry. His
15 video and sound are both breaking up
16 quite a bit on my end. I don't know if
17 they are for anybody else?

18 THE VIDEOGRAPHER: Stand by. The
19 time is 9:39 a.m. and we're going off
20 the record.

21 (Brief recess taken.)

22 THE VIDEOGRAPHER: Stand by. The
23 time is 9:42 a.m. and we're back on
24 record.

25 Q Okay. Right before the break,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 46

1 Mr. Dubinsky, I asked you -- just to level, I
2 had asked you if you developed an opinion
3 that the trades were fake, and your answer
4 was that they were fictitious, there was no
5 stock backing up the trades.

6 In your experience, do trades that
7 never happen get reported to stock exchanges?

8 A Trades that never happened? That's
9 kind of a weird question. I'm not sure how
10 to answer that.

11 So are you -- maybe re-ask the
12 question. I don't know how to interpret
13 that.

14 Q Sure. Okay. Well, you used the
15 phrase or the word "fictitious," so I'll use
16 your word, okay?

17 Is it -- in your experience, do
18 fictitious trades get reported to stock
19 exchanges?

20 MR. WEINSTEIN: Objection to form.

21 A Well, I guess -- are you asking me
22 if somebody creates a fictitious transaction,
23 would they report that to a stock exchange?

24 Is that what you're asking me?

25 Q I'm asking you whether or not -- in

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 47

1 your experience, whether or not fictitious
2 trades get reported to stock exchanges?

3 MR. WEINSTEIN: Objection to form.

4 A Again, I don't know how to answer
5 the question, Mr. Bongiorno. If you're
6 asking me if somebody creates a fake
7 transaction, does that get reported to a
8 stock exchange, it may or may not.

9 I don't know.

10 Q Have you ever seen what you viewed
11 as a fictitious transaction get reported to a
12 stock exchange?

13 MR. WEINSTEIN: Objection to form.

14 A I believe in the -- and I'd have to
15 go back, but I believe in the work that I did
16 on the Madoff case, Mr. Madoff was reporting
17 to NASDAQ trades that had not happened just
18 in terms of volume.

19 But beyond that, no, I haven't seen
20 that.

21 Q You said "in terms of volume."

22 What do you mean by that?

23 A Yes. And again, I'd have to go
24 back, but I think when I was going through
25 the records, there were reports that Madoff

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 48

1 was filing with NASDAQ as to the volume of
2 trading -- trades that he was doing, but
3 there was nothing backing those trades up.

4 Q What about -- I'm not asking about
5 volume of trades. I'm asking about specific
6 trades.

7 Did you -- in your experience, have
8 you ever seen specific trades that were
9 fictitious reported to stock exchanges?

10 MR. WEINSTEIN: Objection to form.

11 A Again, I haven't. I haven't seen
12 that. I haven't specifically looked for that
13 in any of the investigations I've been
14 involved in.

15 Q Did you look in this case to see
16 whether or not any of these trades that you
17 claim are fictitious were reported to stock
18 exchanges?

19 MR. WEINSTEIN: Objection to form.

20 A I did not.

21 Q So you don't know either way
22 whether or not the trades that you claim are
23 fictitious in this case were reported to any
24 stock exchange.

25 Is that a fair statement?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 49

1 A I don't know one way or the other.
2 I didn't see -- in going through the
3 documents, I didn't see any information that
4 I recall where these trades were being
5 reported.

6 I think these were all OTC trades,
7 so they were off-exchange trades.

8 Q Does it matter?

9 A I don't recall seeing any documents
10 that --

11 Q I apologize for interrupting you.
12 Sorry. Your sound broke up on my end and I
13 thought you were done.

14 But I can see from the realtime the
15 rest of your answer.

16 A Right. I was just going to -- did
17 it come through, the rest of the answer?

18 Q I can see it on my screen, but I
19 can't hear it and I can't see you saying it.

20 MR. BONGIORNO: I think we should
21 probably take a break because this is
22 starting to get a little bit more
23 challenging as we go forward.

24 THE VIDEOGRAPHER: Stand by. The
25 time is 9:46 a.m. and we're going off

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 50

1 the record.

2 (Brief recess taken.)

3 THE VIDEOGRAPHER: Stand by. The
4 time is 9:56 a.m. and we're back on
5 record.

6 Q Mr. Dubinsky, you mentioned before
7 that you testified as an expert witness in
8 various cases related to Madoff.

9 Right?

10 A Correct.

11 Q You did a forensic accounting of
12 the Bernard L. Madoff investment securities.

13 Correct?

14 A Correct.

15 Q And you concluded that Madoff
16 engaged in fictitious trading.

17 Correct?

18 A Correct.

19 Q And this morning in your report
20 you've suggested some similarities between
21 this case and the Madoff case.

22 Right?

23 A That's correct.

24 Q Okay. And in fact, you say that
25 "like the Madoff case, the fact that there

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 51

1 are trading documents that reflects trades is
2 not proof that the transactions here were
3 real."

4 Right?

5 A That is correct.

6 Q Why don't you turn to Tab 5209 of
7 your binder? We can mark that as the next
8 exhibit.

9 MR. BONGIORNO: Mark 5209.

10 (Whereupon the above mentioned was
11 marked for Identification.)

12 Q Do you have that in front of you?

13 A Yes, I do.

14 Q Okay. And that document, I hope,
15 is a declaration you submitted in litigation
16 in the Southern District of New York
17 bankruptcy court related to the Madoff case?

18 A Correct.

19 Q Before we go on, I think you might
20 want to tip the camera just a little bit.

21 You're not nearly as -- there you go. Good.

22 Thank you.

23 Now, if you turn to the fifth page
24 of Exhibit 5209, there's -- it's your expert
25 report that you submitted in that case.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 52

1 Right?

2 A Yes, that's correct. It was one of
3 the earlier reports, yes.

4 Q Okay. In the course of preparing
5 that report, you looked at a lot of the
6 Madoff records.

7 Correct?

8 A Correct. Among other things, but
9 yes.

10 Q And you found that Madoff generated
11 fake records to look like records from the
12 DTC.

13 Right?

14 A Correct.

15 Q DTC is the Depository Trust
16 Company.

17 Right?

18 A That's correct.

19 Q And one of the ways that you
20 determined that was to look at metadata.

21 Right?

22 A Correct.

23 Q Let's turn to Page 71 of this
24 expert report, which is Exhibit 5209, and
25 look at Paragraph 175.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 53

1 Okay?

2 A Okay. I have that.

3 Q Okay. And I want to point you to
4 the sentence that says, "The metadata
5 contained within these documents show that
6 the documents were created after the supposed
7 date of the screen lookup inquiry, as
8 depicted in the text within those documents."

9 Do you see that?

10 A I do see that, yes.

11 Q Okay. And let's turn over to
12 Pages 72 and 73 of Exhibit 209 where you
13 discuss that the metadata of these DTC
14 reports show that they were created several
15 days after the date noted in the report.

16 Okay?

17 A Okay.

18 Q And I'll just read a part of 178.
19 "The metadata shows this document
20 was actually created on December 19, 2006 at
21 11:16:00 a.m., 20 days after the date which
22 appears in the text of the document."

23 Do you see that?

24 A I do see that, yes.

25 Q And this information led you to

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 54

1 conclude that these trades did not occur.

2 Correct?

3 A This was one piece of information
4 among many, many things that I've looked at
5 in many analysis. But this was one piece of
6 information that led me to conclude that the
7 trades did not occur.

8 Q Okay. In this case, the case that
9 we're here for today, did you review any
10 metadata of Solo's documents?

11 A There was some metadata that I did
12 review. There was -- I think it was called
13 "End Of Day Trading Spreadsheets" and I
14 recall looking at the metadata in some of
15 those Excel native documents that were
16 produced.

17 And some of that indicated the
18 individual that prepared those was somebody
19 at Solo. I'm drawing a blank on the guy's
20 name right now, but I recall looking at
21 several of the native documents for that.

22 Q Did you look at any metadata of
23 broker documents?

24 A Not that I recall, no.

25 Q How about from interdealer brokers?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 55

1 Did you review any metadata from any
2 interdealer brokers?

3 A No.

4 Q You don't offer any opinion in this
5 case that's based on any of the metadata that
6 you saw, do you?

7 A No.

8 Q There wasn't anything in the
9 metadata that you just mentioned that you saw
10 that would indicate that the documents were
11 created after the trades they appear to
12 reflect, is there?

13 A Well, the documents that I was
14 referring to were capturing information that
15 appear to be historical. I was looking at it
16 just to see if the -- if those documents were
17 prepared contemporaneously with the business
18 records of Solo.

19 And the metadata, as I recall, did
20 show that -- who the author was and the date
21 those were created in the 2013 and '14 and
22 '15 time frame.

23 But beyond that I didn't look for
24 anything else.

25 Q Okay. And so my question to you is

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 56

1 whether any of the metadata in this case that
2 you've seen indicates that the trades, that
3 they were created after the fact.

4 In other words, they were meant to
5 reflect something that occurred previously,
6 like you found in the Madoff case?

7 MR. WEINSTEIN: Objection to form.

8 A Your voice dropped off. I couldn't
9 hear the end of the question, if you can
10 repeat it.

11 Q I said, "like you found in the
12 Madoff case?"

13 A No, right before that you said
14 something I couldn't hear. Maybe just repeat
15 the whole question or someone can read it
16 back and --

17 Q I can just start over.

18 My question to you, and I'll
19 rephrase the question, is whether or not you
20 found any metadata in this case that, like
21 you found in the Madoff case, indicated to
22 you that the documents were created after the
23 date which appears in the text of the
24 document?

25 MR. WEINSTEIN: Objection to form.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 57

1 A Well, the spreadsheet that I looked
2 at or the end of day spreadsheets had
3 historical information on there. So the date
4 I think that was in the metadata would
5 indicate when it was updated. So that would
6 have been updated after the purported trades
7 occurred.

8 But nothing like what
9 you're -- what you asked me. There's nothing
10 like what I found when we were just talking
11 about the Madoff case where the DTC documents
12 were created, made to appear that they were
13 created on a certain date, when, in fact,
14 they were created afterwards.

15 Q Okay. Mr. Dubinsky, in your report
16 you discuss several groups of pension plans,
17 and you defined two of those groups as the
18 Argre plans and the Kaye Scholer plans.

19 Do you recall Shah?

20 A Yes. Let me just get to the
21 report.

22 Are we done with that other
23 exhibit?

24 Q Yeah. You can go to your opening
25 report at -- which is Exhibit 5200, and I'll

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 58

1 direct you from there.

2 But that's the report I'm going to
3 be referencing.

4 A Okay. Thank you.

5 Q And I'll be going to Paragraph 22
6 on Page 13, but if there's something else you
7 want to look at to respond to that last
8 question, feel free.

9 A What was the last question?

10 Q It was whether or not you recall
11 referring to two groups of pension plans in
12 your report as "the Argre plan" and "the
13 Kaye Scholer" -- "Argre plans" and "the
14 Kaye Scholer plans?"

15 A Those were two of the groups. I
16 think there were two other groups I referred
17 to as well, "the Lehman plans" and "the Zeta
18 plans."

19 But yes, on Page 12 of my report,
20 Paragraph 20 through 23, I reference "the
21 Argre plans," and then "the Kaye Scholer
22 plans" as Paragraph 24 through 27.

23 Q Okay. And I'm going to point you
24 to Paragraph 22 now, which I think you just
25 said you have in front of you. I'm going to

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 59

1 read to you the second sentence.

2 "In each partnership agreement, the
3 plan undertook all the Solo trades in its
4 name as an undisclosed agent or nominee for
5 the partnership and transferred almost all of
6 the proceeds that SKAT paid the plan, meta
7 fees to Solo and others, to entities
8 controlled by the Argre principals."

9 Did I read that correctly?

10 A Yes.

11 Q Okay. You refer to an "undisclosed
12 agent or nominee for the partnership."

13 Do you see that?

14 A Yes.

15 Q Is that a legal conclusion, sir?

16 A No, it's not.

17 Q On what basis are you qualified to
18 say that "the plans undertook all the Solo
19 trades in its name as an undisclosed agent or
20 nominee for the partnership?"

21 A If I recall, the -- there were
22 partnership agreements. And in the
23 partnership agreements, there was a section
24 towards the back, if I recall properly, that
25 indicated the plans would act as nominee or

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 60

1 could act as nominee for the purported
2 trades.

3 So I think that's where I was
4 getting that from.

5 Q So you reviewed the partnership
6 plans?

7 A The partnership agreement? Is that
8 what you're asking?

9 Q Yes, sir. Partnership agreement.

10 A Yes.

11 Q And it's on the basis of your
12 review of those partnership agreements that
13 you determined that "the plans undertook all
14 Solo trades in its name as an undisclosed
15 agent or nominee?"

16 A I believe that was the basis of
17 that statement, yes.

18 Q And in Paragraph 27, you say
19 something similar. I'm going to point you to
20 that now.

21 A Yes, I see that.

22 Q Similar to the -- and I'm reading
23 from Paragraph 27 of your opening report,
24 which is Exhibit 5200 -- "Similar to the
25 Argre partnership arrangements, in each of

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 61

1 the 26 partnerships, the plan undertook all
2 Solo trades in its name as an undisclosed
3 agent or nominee for the partnership, and
4 transferred almost all of the proceeds that
5 SKAT paid to the plan, meta fees to Solo
6 Capital and others, to two of the three
7 trusts."

8 Do you see that?

9 A Yes, I see that.

10 Q And that's in reference to what you
11 call "the Kaye Scholer plans."

12 Right?

13 A Correct.

14 Q Okay. And you said you read the
15 Argre plan partnership agreements?

16 A Yes. And -- as well as the
17 Kaye Scholer plan partnership agreements.

18 Yes, that's correct.

19 Q Did you review any of the schedules
20 to the partnership agreements?

21 A Yes. So I would have reviewed the
22 schedules that were attached. There were
23 many I recall that weren't filled out, if my
24 memory serves me.

25 But if you have one, I'm happy to

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 62

1 look at it.

2 Q We will.

3 Are you familiar with the
4 provisions of these agreements regarding the
5 quote-unquote "custody of securities?"

6 A I would have to go back and look at
7 the clause that you're talking about.

8 Q You don't recall as you sit here
9 today?

10 A Not off the top of my head, no.

11 Q Let's look at Tab 5210 of your
12 binder.

13 MR. BONGIORNO: I'd like to mark
14 that as the next exhibit, 5210.

15 (Whereupon the above mentioned was
16 marked for Identification.)

17 Q Do you have that one in front of
18 you?

19 A I do.

20 Q Okay. Have you seen this before?

21 A I don't know if I put eyes on this
22 particular one. I've seen ones that are
23 similar to this.

24 I may have.

25 Q So the -- this document looks

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 63

1 familiar to you even though you may not have
2 seen this specific one?

3 Is that fair?

4 A It's fair. I think most of the
5 partnership agreements that I saw were cookie
6 cutters of each other, so it does look
7 familiar.

8 Q Okay. Delvian was an Argre plan.

9 Right?

10 A I'd have to go look from my report.
11 I categorized them by groups.

12 I don't recall.

13 Q Okay. I mentioned a moment ago
14 custody of securities. I'll point you to
15 that section now so you can see it.

16 It's Section 12 on Page 4 of this
17 exhibit, 5210.

18 Can you read that section to
19 yourself, sir?

20 A Okay.

21 (Witness reviewing.)

22 Okay.

23 Q Okay. Now I want to focus your
24 attention on the bottom of that section after
25 the last semicolon, "and provided further,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 64

1 however, that the partnerships shall have no
2 claim of a nominee arrangement with respect
3 to any property of a partner unless such
4 property is so set forth on Schedule A."

5 Do you see that?

6 A I do see that, yes.

7 Q And when you reviewed these
8 agreements, did you review the Schedule A?

9 A Yes.

10 Q Now let's turn to the last page of
11 the document, which is Schedule A.

12 A Okay.

13 Q This doesn't list any Solo account.

14 Right?

15 A It does not.

16 Q It's blank.

17 Correct?

18 A Correct.

19 Q Okay. Let's go -- let's mark the
20 next exhibit, 5211, which is at Tab 5211 in
21 your binder.

22 MR. BONGIORNO: Mark 5211.

23 (Whereupon the above mentioned was
24 marked for Identification.)

25 Q Do you have that in front of you?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 65

1 A I do.

2 Q Is it the general partnership
3 agreement of Roadcraft Technologies General
4 Partnership?

5 Is that what you have in front of
6 you, Mr. Dubinsky?

7 A Yes.

8 Q Okay. And that -- we'll have that
9 marked as 5211, okay?

10 And again, can you turn to
11 Section 12 on Page 4 of the document?

12 A Okay. I see that.

13 Q This is the "Custody of Securities"
14 section again.

15 Right?

16 A Yes.

17 Q And it -- like the last one we
18 looked at, Section 12 on Page 4 of
19 Exhibit 5211 says, at the end after the
20 semicolon, "and provided further, however,
21 that the partnership shall have no claim of
22 nominee arrangement with respect to any
23 property of a partner unless such property is
24 so set forth on Schedule A."

25 Correct?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 66

1 A Correct.

2 Q So this has the same language as
3 the Delvian agreement we just looked at.

4 Right?

5 A Correct.

6 Q And let's look at the last page of
7 this document.

8 A Okay.

9 Q You have that in front of you?

10 A I do.

11 Q And this shows that the Roadcraft
12 Technologies account at Wells Fargo Bank was
13 designated as property held as nominee.

14 Right?

15 A Correct.

16 Q This does not list any account at
17 one of the Solo custodians, does it?

18 A It does not.

19 Q Okay. Mr. Dubinsky, you say you
20 reviewed records related to 2,559 trades
21 conducted through Solo custodians.

22 Right?

23 A Correct.

24 Q And I can -- okay. I was going to
25 offer to point you to your report.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 67

1 But you recall that, I take it?

2 A Yes.

3 Q Okay. Those trades involved shares
4 in Danish companies.

5 Right?

6 A They were -- I classified those as
7 purported transactions and purported shares
8 of Danish companies. That would be the way
9 that I would classify them.

10 Q Okay. In your report, you reviewed
11 such trades in shares of Carlsberg.

12 Right?

13 A Correct.

14 Q And also such trades in Novo
15 Nordisk.

16 Correct?

17 A Yes.

18 Q And also you reviewed such trades
19 in AP Moeller-Maersk.

20 Right?

21 A Correct.

22 Q Okay. And those are real
23 companies.

24 Right?

25 A That is correct, yes.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 68

1 Q Carlsberg is a beer company.

2 Right?

3 A Correct.

4 Q Novo Nordisk is a pharmaceutical
5 company.

6 Correct?

7 A That's correct.

8 Q And AP Moeller-Maersk is a shipping
9 company.

10 Right?

11 A That's correct.

12 Q Most shares in Denmark are
13 dematerialized.

14 Correct?

15 A That's my understanding, yes.

16 Q And that means that no one is
17 holding paper stock certificates.

18 Right?

19 A That's correct.

20 Q Dematerialized share holdings are
21 reflected in electronic book entries.

22 Correct?

23 MR. WEINSTEIN: Objection to form.

24 A At a custodial -- or at the issuer,
25 they would be maintained electronically, and

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 69

1 at a custodian that actually holds custody of
2 them, yes.

3 Q Let's go to your opening report,
4 which is Exhibit 5200 at Page 39.

5 A Do you have that in front of you?

6 Q I do.

7 A Okay. And I'm going to point you
8 to Paragraph Roman Numeral 6, Opinion
9 Number 1.

10 A Do you see that?

11 A I do.

12 Q And this is the one in all caps and
13 bolded.

14 "There is no evidence that the
15 plans ever owned actual shares of Danish
16 securities from their Solo trades or received
17 actual dividends issued by the Danish
18 companies whose stock was purportedly used in
19 the Solo trades."

20 A Do you see that?

21 A Yes.

22 Q Ownership is a legal concept, isn't
23 it?

24 A I think it certainly -- well, it's
25 an accounting and legal concept. But from

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 70

1 the standpoint of in the ultimate
2 determination who had legal title, yes, that
3 would be a legal determination.

4 Q And that's not a determination that
5 you're qualified to make.

6 Right?

7 A Again, I'm not a lawyer. I was
8 doing a forensic accounting investigation to
9 determine whether there was evidence that
10 these shares actually existed, and that's
11 what I was discussing.

12 Q Okay. But this doesn't -- this
13 opinion doesn't talk about whether the shares
14 actually existed.

15 It talks about ownership, doesn't
16 it?

17 MR. WEINSTEIN: Objection to form.

18 A Well, the heading says what it
19 says. But as you go through the report, the
20 basis for the opinion is that I saw no
21 evidence to support that the shares actually
22 existed.

23 And therefore, if the shares didn't
24 exist, certainly from a forensic accounting
25 standpoint, the plans couldn't have owned

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 71

1 them.

2 Q You say if the shares didn't exist,
3 the plan -- the plans couldn't have owned
4 them.

5 Is -- again, I ask you: Is that a
6 legal opinion?

7 A No, I think that's a forensic
8 accounting opinion, I think the genesis
9 being, after doing a forensic investigation
10 and looking for evidence of the actual shares
11 existing at either -- ultimately at a
12 custodian that Solo used as a sub-custodian,
13 and the fact that those shares didn't exist,
14 I concluded that therefore, the plans could
15 not have owned them. And I think that's a
16 forensic accounting conclusion.

17 Ultimately, the judge or jury --
18 well, the judge would have to make a
19 determination from a legal standpoint if
20 there's something different than that, if
21 there was legal ownership or not.

22 I'm not issuing a legal opinion.

23 Q So the forensic -- so a forensic
24 accountant is qualified to determine
25 ownership?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 72

1 Is that your testimony?

2 MR. WEINSTEIN: Objection to form.

3 A I think certainly from the
4 standpoint of looking at the substance of a
5 transaction and trying to determine if the
6 substance was, were there shares, did the
7 plans actually own those, yes, I think I'm
8 qualified and it is within the purview of a
9 forensic accounting investigation.

10 I think the judge will make a
11 determination -- if there's a different legal
12 meaning, then that would be up to the judge
13 to make.

14 Q So is that ownership under U.S.
15 principles of ownership?

16 MR. WEINSTEIN: Objection to form.

17 A Again, I'm not issuing a legal
18 opinion or not, or I'm not issuing a legal
19 opinion.

20 What I'm saying is I'm looking from
21 an accounting perspective, what do I see. Do
22 the plans -- and they're U.S. based pension
23 plans -- did they own the shares, did the
24 shares exist.

25 And I concluded the shares did

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 73

1 not -- there was no evidence that the shares
2 existed. And therefore, the dividends
3 weren't -- couldn't have existed, weren't
4 paid, and that was my conclusion.

5 Q I'm asking you regarding your
6 statement regarding ownership, sir. And I'm
7 asking you whether it was under U.S.
8 principles of ownership.

9 What is your answer to that
10 question?

11 A Again, I think you're asking for a
12 legal conclusion and I'm not here to give you
13 a legal opinion on -- I'm here to tell you
14 what I did and under what basis that I
15 opined.

16 Q So the concept of ownership in your
17 Opinion Number 1, you're not willing to tell
18 me under what principle you're giving that
19 opinion, whether it's U.S., EU, Danish, or
20 whatever?

21 MR. WEINSTEIN: Objection to form,
22 asked and answered.

23 A Again, I'm not here to issue a
24 legal opinion. I think that would call for a
25 legal opinion.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 74

1 Q You would agree, wouldn't you, the
2 customer can have a long position in a stock
3 without shares being held in their
4 custodian's account.

5 Right?

6 MR. WEINSTEIN: Objection to form.

7 A Can you repeat the question again?

8 Q Sure. You would agree that a
9 customer can have a long position in a stock
10 without shares being held in their
11 custodian's account.

12 Right?

13 MR. WEINSTEIN: Objection to form.

14 A If -- I guess one example could be
15 if they actually had the paper certificates,
16 then they could be -- they'd be long and they
17 don't have to have them in a custodial
18 account.

19 That would be an example.

20 Q I'm asking in the context of
21 dematerialized shares, sir, so let's put
22 aside paper stock certificates, which I think
23 most of the world has for a long time now.

24 A customer can have a long position
25 in stock without there being any record of

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 75

1 the shares being held in the accounts of a
2 central securities depository.

3 Right?

4 MR. WEINSTEIN: Objection to form.

5 A Again, I'm not sure I understand
6 the question.

7 Q What don't you understand?

8 A The question that you just asked
9 me. You said --

10 Q Do you understand anything about
11 it?

12 A Well, you asked, "Could somebody
13 have a long position in stock and the central
14 securities depository doesn't have record of
15 that?"

16 Is that what you're asking?

17 Q That's the question I just asked,
18 yes.

19 MR. WEINSTEIN: Objection to form.

20 A I don't know. I mean, maybe you're
21 asking -- are you asking -- it sounds like
22 you're asking a legal, you know, opinion. I
23 don't have a legal opinion on that and I'm
24 struggling to figure out how that could be.

25 Q Are you familiar with situations

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 76

1 where one can own shares without a custodian
2 or sub-custodian having any shares?

3 MR. WEINSTEIN: Objection to form.

4 A Again, not that I'm aware of in
5 your -- maybe you can add some facts to the
6 hypothetical to make it clearer for me.

7 But in general, I don't know how
8 that could be.

9 Q You can't think of any circumstance
10 under which that could happen as you sit here
11 today without me providing you with a
12 hypothetical.

13 Is that your testimony?

14 MR. WEINSTEIN: Objection to form.

15 A Again, nothing's coming top of
16 mind.

17 Q Let me ask you about another word
18 you used in this opinion.

19 You say, "The plans never owned
20 actual shares."

21 Do you see that?

22 A Yes.

23 Q Okay. Is "actual shares" a
24 technical term?

25 A No.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 77

1 Q Is it a legal term?

2 A No. It's a term that I penned
3 there just to indicate the existence of the
4 actual Danish securities. That's what I was
5 referencing.

6 So it's not a technical term.

7 Q Okay. Most shares in Denmark exist
8 in electronic book entry form.

9 Right?

10 A Correct.

11 Q Book entries would show long or
12 short positions.

13 Is that right?

14 A Book entries at a broker?

15 Is that what you're asking?

16 Q Sure.

17 A There could be records of the
18 broker showing long and short positions,
19 correct.

20 Q Let's go to Heading A on Page 40 of
21 your report. This is Exhibit 5200 still.

22 A Yes.

23 Q There you say, "The sub-custodians
24 identified by Solo Capital confirmed that
25 they did not hold any shares of Danish

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 78

1 securities on behalf of the Solo custodians
2 during the relevant period."

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q You don't say anything here about
7 whether anyone owned any shares.

8 Right?

9 A In that statement, I don't say
10 anything about that specifically.

11 Q Do you say anything about it
12 generally?

13 A No. You were just reading
14 sub-point A, and it says what it says. "The
15 sub-custodians identified by Solo Capital
16 confirmed that they did not hold any shares
17 of Danish securities on behalf of the Solo
18 custodians during the relevant period."

19 Q Okay. With some interruption,
20 we've been going for about an hour and a
21 half.

22 Why don't we take a break?

23 A Okay.

24 THE VIDEOGRAPHER: Stand by. The
25 time is 10:28 a.m. and we're going off

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 79

1 the record.

2 (Brief recess taken.)

3 THE VIDEOGRAPHER: Stand by. The
4 time is 10:45 a.m. and we're back on
5 record.

6 Q Okay. Can you hear me all right,
7 Mr. Dubinsky?

8 A Yes. Much better, thank you.

9 Q Okay. Let me try to set out a
10 simple hypothetical for you, okay?

11 Let's say I call my stock broker
12 today and I asked to buy a hundred shares of
13 Apple. If I purchase those shares today and
14 Apple stock goes down ten dollars per share
15 tomorrow, I will suffer a loss in value of
16 those shares.

17 Right?

18 A Assuming the trade is settled and
19 cleared, yes.

20 Q Well, the trade isn't going to
21 settle and clear today, is it?

22 A No, but inherent in the trading
23 process there has to be settlement in
24 clearance. So when you say you made a trade,
25 inherent in that is, at some point, whether

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 80

1 it's a T plus 2 or 3 trading cycle, whatever
2 the trading cycle is, depending on what
3 jurisdiction, once the settlement occurs and
4 you have ownership of that stock, yeah, if
5 you turned around and sold it at that point,
6 you'd have an economic loss or gain.

7 Q But I'm buying the shares today.
8 The stock's going down ten dollars and that's
9 all happening before the trade settles.

10 Right?

11 A Yes. The price movement would
12 occur before the trade settles, yes.

13 Q And you would agree with me that I
14 suffer the loss, the ten-dollar loss.

15 Right?

16 A Well, again, there's a -- there's
17 an unrealized loss at that point, but the
18 stock has to settle. You can't just have a
19 trade that hangs in thin air without
20 settlement. You have to get the stock at
21 some point.

22 And then, depending on what the
23 economics are at that point, you'd conclude
24 the trade.

25 Q So if I don't pay for the shares,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 81

1 and the trade never settles, who is
2 responsible for that ten-dollar loss?

3 MR. WEINSTEIN: Objection, calls
4 for a legal conclusion.

5 A Yeah, I think you're asking for me
6 to issue a legal conclusion on who would be
7 liable for a trade. You know, there's a lot
8 of facts that could go into that, so it's
9 hard to answer.

10 Q Okay. So you can't answer that
11 question.

12 A Right?

13 A I think you'd need to take the
14 hypothetical and give me some more facts.

15 Q What other facts do you need?

16 A Does the stock exist? Was there
17 stock that was going to settle? Was it just
18 a broken trade that is -- the trade is never
19 fixed?

20 I mean, there are a lot of
21 different hypotheticals.

22 Q Okay. So let's say I call today,
23 on Tuesday, to buy the shares of Apple and
24 the trade is going to settle on Thursday.

25 But let's say I decide later today

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 82

1 to sell those same shares. I can sell those
2 shares even though the trade hasn't settled
3 yet.

4 Right?

5 MR. WEINSTEIN: Objection.

6 A Again, my understanding is you
7 could place a trade to sell them, but you
8 have to go through the first settlement
9 before you can settle on the sale. So you'd
10 need to have the settlement on the buy side,
11 and then go to settlement on the sell side.

12 You can't just do it in thin air.

13 Q Oh, so you're saying that I can't
14 buy and sell Apple on the same day?

15 MR. WEINSTEIN: Objection,
16 misstates his testimony.

17 A That's not what I said.

18 Q It was a question.

19 MR. WEINSTEIN: The question was --

20 Q Can you buy and sell Apple on the
21 same day?

22 A You could place a trade for a buy
23 order and a sell order on the same day, yes.

24 Q And when you buy the shares, are
25 you the owner of the shares?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 83

1 MR. WEINSTEIN: Objection, calls
2 for a legal conclusion, vague. Again,
3 you know, I think you're --

4 MR. BONGIORNO: I think you could
5 just object without giving a speech,
6 please.

7 MR. WEINSTEIN: Did you hear the
8 objections of your side the other day?
9 Lengthy speeches and bases. But when
10 you call for a legal conclusion, I'm
11 going to make that objection.

12 A Again, I think you're asking me for
13 a legal conclusion on who owned -- who owns
14 the shares. But assuming a trade is placed
15 and settlement is to occur and the stock is
16 actually delivered -- cleared, delivered, and
17 settled, then you would own the stock, the
18 stock is there. You own it.

19 Q But if you buy and sell on the same
20 day, it doesn't -- the buy doesn't clear,
21 does it?

22 MR. WEINSTEIN: Objection, form.

23 A Again, the buy -- you can place the
24 orders on the same day, but there has to be a
25 settlement and clearance process for the two

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 84

1 legs of that trade.

2 Q But they can net settle, can't
3 they?

4 MR. WEINSTEIN: Objection to form.

5 A In what scenario?

6 Q In the scenario I just gave where I
7 buy a hundred shares of Apple today, and then
8 I sell later today?

9 MR. WEINSTEIN: Objection to form.

10 A If the -- if you're trading
11 through -- my understanding is if you're
12 trading through the same sub-custodian and
13 both the buyer and seller or custodian or
14 sub-custodian and both the buyer and seller
15 have accounts there when the settlement
16 occurs, there could be a net settlement
17 because the stock is already at the
18 custodian. The stock exists.

19 So in that hypothetical, I would
20 agree that type of net settlement could
21 occur.

22 Q So your testimony is, if I buy and
23 later sell a hundred shares of Apple on the
24 same day through my broker, they can't net
25 settle unless the broker is long those

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 85

1 shares?

2 Is that your testimony?

3 MR. WEINSTEIN: Objection to form.

4 A No. I'm saying that the
5 shares -- either the broker has a market in
6 those shares and has an inventory. But you
7 posed if you bought and sold, and the -- and
8 the broker is acting as an agent for that
9 sale, not a principal, then, in that
10 hypothetical, I believe they can net settle
11 if both the buyer and seller were at the same
12 institution and the shares were already
13 either at the custodian at the institution or
14 the sub-custodian.

15 That's my understanding.

16 Q So your view is if the shares are
17 not already at the custodian or
18 sub-custodian, and I buy and sell on the same
19 day, that the custodian has to go out and
20 find those shares even though I bought and
21 sold them the same day?

22 A My -- it's -- again, I'm not -- I
23 think there's other people dealing with
24 trading, trading experts in this case.

25 That's not, you know, my area or my opinion.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 86

1 But my general understanding is,
2 yes, to net settle, you would have to have
3 the shares at the same custodian or the
4 shares were being borrowed and brought into
5 that custodian and already sourced.

6 But that's my general
7 understanding. I'm not an expert on net
8 settlement.

9 Q Okay. Let's look at Tab 5225 of
10 your binder.

11 MR. BONGIORNO: We'll mark this as
12 Exhibit 5225.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 Q It's a document entitled "SEC
16 Investor Publications, Day Trading: Your
17 Dollars at Risk."

18 Do you have that?

19 A It doesn't say "SEC." Mine just
20 says "Investor Publications, Day Trading:
21 Your Dollars at Risk."

22 Q Okay. We're looking at the same
23 document, and we're at tab -- Exhibit 5225.

24 At the top of the page, I want to
25 read to you the first sentence.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 87

1 "Day traders rapidly buy and sell
2 stocks throughout the day in the hope that
3 their stocks will continue climbing or
4 falling in value for the seconds to minutes
5 they own the stock, allowing them to lock in
6 quick profits."

7 Did I read that correctly?

8 A Yes.

9 Q And does this document suggest to
10 you that traders can both buy and sell the
11 same stock on the same trading day?

12 A Yes, that's what it says.

13 Q And it says the traders can do this
14 rapidly throughout the day.

15 Correct?

16 A Correct.

17 Q And if the traders buy and sell
18 rapidly, they nonetheless own a stock on the
19 trade, even if for seconds to minutes.

20 Right?

21 MR. WEINSTEIN: Objection to form.

22 A Well, again, I haven't read this
23 whole document and I don't -- I mean, it
24 says -- it says what it says.

25 I don't know what they mean by "own

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 88

1 the stock" in regards to this. I haven't
2 read this whole document.

3 I assume --

4 Q But it doesn't say?

5 A Well, I assume they mean the trades
6 settle. I assume they mean they're going to
7 settle. You can't have a trade that doesn't
8 settle.

9 But it doesn't -- let me just see
10 if it says anything else about that here.

11 (Witness reviewing.)

12 Q Okay.

13 A (Witness reviewing.)

14 Yeah, it doesn't get into much
15 detail.

16 Q It doesn't say anything about
17 settlement.

18 Right?

19 A No. It's a two-page document from
20 2005. It doesn't really get into the
21 mechanics of the trade.

22 Q The document doesn't say that a day
23 trader must confirm that its broker or
24 custodian holds the shares that the investor
25 is purchasing.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 89

1 Right?

2 A It doesn't -- well, let me -- let's
3 just see.

4 (Witness reviewing.)

5 No, it's just -- it's just saying
6 that day trading firms must register with the
7 SEC in the states. No, it doesn't -- it
8 doesn't say specifically anything about
9 confirming with the broker.

10 Q But it does use the word "own."

11 Right?

12 A Yes.

13 Q The same word you used in one of
14 your opinions that we looked at earlier?

15 A Yes.

16 Q And you'd agree with me that short
17 selling is very common.

18 Right?

19 A I would agree that short selling
20 happens in the market.

21 Q You wouldn't agree with me that
22 it's common, though?

23 A Well, in relative to what, short
24 sell? I will agree that short selling occurs
25 and it happens.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 90

1 But again, relative to what? You
2 know, on a given day, a month, it happens.
3 Short selling occurs.

4 Q And that's when an investor sells
5 shares that it does not have with an intent
6 to buy the shares at a later date.

7 Right?

8 A Well, I'm not sure I agree with
9 that definition, specifically.

10 It's -- are you talking about a
11 naked short where the shares haven't been
12 sourced yet?

13 Q What's your definition of a "short
14 sale?"

15 A Well, you asked me the question.
16 I'm just trying to get you to clarify the
17 question so I can answer it.

18 Q Okay. Now I'm asking you another
19 question.

20 What is your definition of a "short
21 sale?"

22 A A "short sale" is usually a sale
23 where the shares have been sourced, you don't
24 have the shares yet, and then you're going to
25 cover -- when the delivery and settlement has

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 91

1 to occur, you're going to cover your short.

2 Q So when someone sells short, they
3 don't necessarily have a long position, and
4 so they don't have any shares at the time of
5 the short sale.

6 Right?

7 A They wouldn't have a -- they may
8 have a long position, and may choose to go
9 short against the box. But they're -- if
10 they don't have a long position, then that
11 short position can't be a naked short as far
12 as I understand it.

13 It has to be -- the shares have
14 to -- you have to have a source to get the
15 shares through a loan or some other
16 arrangement to have those shares at some
17 point.

18 Q Okay. So you would agree with me
19 that the result of a short sale is that the
20 market can have investors that have economic
21 exposure to a higher number of shares than
22 the amount issued by the issuer.

23 Right?

24 MR. WEINSTEIN: Objection to form.

25 A I guess that's possible. I don't

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 92

1 think that's very common.

2 Q Well, the number of total
3 outstanding long positions can reach over a
4 hundred percent of the total outstanding
5 shares issued by the company, right, as a
6 result of short sales?

7 MR. WEINSTEIN: Objection to form.

8 A In long positions, trades that have
9 not settled yet? Is that what you mean?

10 There can only be -- I mean, once
11 the trade settles, there can only be the
12 stock the issuer has. It can't be -- you
13 can't trade more stock than the issuer has
14 actually issued.

15 Q Well, someone can be long in a
16 stock as a result of purchasing from a short
17 seller.

18 Right?

19 A If it hasn't gone to settlement?
20 Is that what you're saying?

21 Again, once it goes to settlement,
22 the shares are there. So the shares in the
23 system -- if I'm Exxon, and I've got
24 10 million authorized and issued shares,
25 that's how many shares are authorized and

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 93

1 issued.

2 And that's what -- ultimately, at
3 the end of the day, that's what's traded.

4 Q Right. But a short seller can
5 borrow shares to sell, right?

6 Isn't that what happens?

7 A Yeah, but they have to borrow real
8 shares. They can't borrow shares out of thin
9 air.

10 So somebody has to own those shares
11 and be long in the shares. And those are
12 shares of the original issuer that are issued
13 in outstanding shares.

14 Q Right. But the short seller is
15 borrowing them from someone who's long, and
16 selling them to someone else who's then long
17 as well.

18 Right?

19 MR. WEINSTEIN: Objection to form.

20 A That's during the -- you're -- so
21 you're -- I think what you're asking is
22 presettlement? If somebody just places an
23 order and a trade before it settles, if I
24 understand you correctly? Is that what
25 you're asking me?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 94

1 Because once it settles, there's a
2 settlement.

3 Q Eventually, sure. I'm asking you
4 about the moment when somebody purchases from
5 a short seller who has borrowed from someone
6 else who is long.

7 Both the lender of those shares and
8 the buyer of those shares that were sold
9 short, they're both long at that point in
10 time, are they not?

11 MR. WEINSTEIN: Objection to form.

12 A Well, I think in theory they're
13 long. But settlement has to occur. So in
14 your -- I think the hypothetical is an
15 incomplete hypothetical.

16 You have to say, at the point it
17 settles, not everybody is going to be long.
18 The shares actually transferred at that
19 point.

20 Q So you don't know whether or not
21 it's possible for short interests to cause
22 there to be long positions that are over a
23 hundred percent of the outstanding shares?

24 MR. WEINSTEIN: Objection, asked
25 and answered.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 95

1 A Yeah, I think there could be. I
2 don't think it's very common.

3 And again, I think it would be at
4 that moment before settlement occurs when the
5 trades are placed.

6 Q Well, it's not a moment, is it,
7 sir, for settlement to occur? It's not a
8 moment, it's days, isn't it?

9 A No. I said the moment the trades
10 are placed, but until settlement occurs.
11 Yes, there's several days in that -- in that
12 time frame, yes.

13 Q You said it would be at that moment
14 before settlement occurs.

15 And my question to you is: It's
16 not just a moment before settlement occurs,
17 it's days before settlement occurs.

18 Right?

19 MR. WEINSTEIN: Objection to form.

20 A Again, assuming the shares exist
21 and settlement will happen, yes, it's T plus,
22 depending on the jurisdiction, whatever the
23 settlement is.

24 Q Okay. Let's go to -- let's go to
25 Dr. Carr's report. Actually, we won't go to

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 96

1 his report.

2 We'll go to something his report
3 cites, which is in Tab 5227 of your binder.

4 MR. BONGIORNO: We can mark that as
5 Exhibit 5227.

6 (Whereupon the above mentioned was
7 marked for Identification.)

8 Q Do you have in front of you a
9 document that -- with the SEC seal on the
10 front dated October 14th of last year?

11 A Yes.

12 Q Okay. Have you seen this document
13 before?

14 A No, I have not.

15 Q Sorry? I didn't hear you.

16 A I'm sorry. No, I have not.

17 Q Well, I can represent to you this
18 was cited in Dr. Carr's report. If you look
19 at the Table of Contents, you can see that it
20 discusses "GameStop."

21 A Yes, I see that.

22 Q Okay. If you go to Page 21 of the
23 report, you see where it says, "Some
24 institutional accounts had significant short
25 interests in GME" -- which is

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 97

1 GameStop -- "prior to January 2021."

2 Are you with me?

3 A Right underneath the charts? Is
4 that where you're reading?

5 Q Exactly.

6 A Yeah, I see that.

7 Q Okay. And do you see the next
8 sentence, which starts, "GME, GameStop, short
9 interest, as a percentage of float in January
10 of 2021, reached 122.97 percent."

11 Do you see that?

12 A Yes.

13 Q Do you understand that to mean that
14 the percentage of short -- that the amount of
15 short interests in GameStop was more than the
16 entire float of GameStop?

17 MR. WEINSTEIN: Objection to form.

18 He said he's never seen this document
19 before.

20 A Again, I haven't seen the document,
21 I haven't read through it. I mean, it says
22 what it says, so I don't know how they're
23 defining things and what the background is to
24 this.

25 Q Okay. So you can't -- you can't

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 98

1 agree with me that this sentence says that
2 the interests -- "the short interests in
3 GameStop, as a percentage of float, reached
4 122.97 percent?"

5 You're not willing to agree to
6 that?

7 MR. WEINSTEIN: Objection. He did
8 agree to your first question. Your next
9 question was a different one.

10 A You asked me, did you -- I think
11 you --

12 MR. BONGIORNO: Do you want to
13 answer it for him, Marc, or do you want
14 him to answer it?

15 MR. WEINSTEIN: He actually did
16 answer it once, if you want to go back
17 on your realtime. And then you asked a
18 different question.

19 MR. BONGIORNO: I thought you said
20 it was a different question.

21 MR. WEINSTEIN: Why don't you just
22 ask a question now?

23 MR. BONGIORNO: I did.

24 MR. WEINSTEIN: And what's the
25 question on the table?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 99

1 Q You can't agree with me that the
2 sentence says that "the interest -- short
3 interest in GameStop, as a percentage of
4 float, reached 122.97 percent?"

5 You're not willing to agree to
6 that?

7 MR. WEINSTEIN: Objection to form.

8 A I agree that you read it correctly.

9 Q And you don't understand what that
10 sentence means?

11 A Again, I haven't read through the
12 report you're putting in front of me. This
13 is the first time I've seen it.

14 It's 20 -- let's see how many
15 pages -- no, it's 44 pages. So no, I'm not
16 going to agree to anything in this until I
17 have time to read the entire report and
18 digest it and see if I understand it.

19 So you can read whatever you would
20 like from it, I can tell you that you read it
21 correctly if that's what you want.

22 But that's as far as I can go.

23 Q Okay. You would agree with me,
24 sir, that an investor can have -- can obtain
25 economic exposure to an underlying stock from

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 100

1 means other than purchasing the stock.

2 Right?

3 MR. WEINSTEIN: Objection to form.

4 A I'm not sure what you mean, if
5 you --

6 Q Well, an investor can obtain
7 economic exposure to a stock through a
8 derivative.

9 Right?

10 A I'm sorry. I didn't hear the end
11 of that.

12 Through what?

13 Q Sorry. I'll do it again. Sorry
14 about that.

15 An investor can obtain economic
16 exposure to a stock through a derivative.

17 Right?

18 A I think in the general
19 hypothetical, it could be -- it's possible,
20 yes.

21 Q And an investor can obtain economic
22 exposure to a stock through an option.

23 Right?

24 A In general, that's correct.

25 Q And an investor can obtain economic

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 101

1 exposure to a stock through a futures
2 contract.

3 Right?

4 A In general, that's correct.

5 Q And an investor can obtain economic
6 exposure to a stock through a forward
7 contract.

8 Right?

9 A In general, that's correct.

10 Q And an investor can obtain economic
11 exposure to a stock through a notional
12 principal contract.

13 Right?

14 MR. WEINSTEIN: Objection to form.

15 A Again, depending on the terms of
16 that contract, it's possible, yes.

17 Q And you're aware that the pension
18 plans entered into flex futures contracts.

19 Right?

20 MR. WEINSTEIN: Objection to form.

21 A There was trades that Solo made
22 that I saw on behalf of the pension plans,
23 some of them, at certain times, for flex
24 futures.

25 Q And you further agree that those

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 102

1 contracts were actually executed on an
2 exchange and were real.

3 Right?

4 MR. WEINSTEIN: Objection to form.

5 A Again, I think that there was
6 evidence that those futures were executed. I
7 think the ones we're referring to were at
8 J.P. Morgan in the earlier period -- you
9 know, earlier periods.

10 But yes, my understanding, those
11 were exchange traded futures.

12 Q And they were real.

13 Right?

14 A There were -- as I recall, there
15 were offsetting legs that Solo was placing.
16 But yes, those actually were real
17 transactions, the actual flex future that I
18 saw.

19 Q Okay. Let's go to Tab 5217 in your
20 binder.

21 MR. BONGIORNO: Which we'll mark as
22 Exhibit 5217.

23 (Whereupon the above mentioned was
24 marked for Identification.)

25 A 5317 or 5217?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 103

1 Q I meant 5217.

2 A I think you said "53," but I've got
3 5217.

4 Q All right. It's already 11:00. If
5 that's the first one I got wrong, I'm doing
6 great, trust me.

7 Do you have that in front of you,
8 sir?

9 A I do, yes.

10 Q Okay. Is it an e-mail from
11 Execution@FGC Securities to Adam@Bernina P?
12 Is that what it is?

13 A Yes.

14 Q If you look further down the page
15 on the cover e-mail, this relates to a
16 transaction done by the Bernina Pension Plan
17 in shares of Carlsberg stock?

18 MR. WEINSTEIN: Objection to form.

19 A The purported purchase, yes.

20 Q Right. No, I understand that's
21 your position, and you know, if you -- you
22 don't need to say "purported," but feel free.

23 But I think we understand each
24 other in that regard.

25 A Okay.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 104

1 Q I want you to turn to the page to
2 the attachment behind the blue sheet. Okay?

3 This is -- we're still in Exhibit 5217.

4 I want you to look at Bates
5 number 75373.

6 A Okay. I see that.

7 Q It's a document entitled "Equity
8 Futures Confirmation."

9 Correct?

10 A Yes.

11 Q And it shows the terms and
12 conditions of an equity futures transaction.

13 Correct?

14 A Yes.

15 Q It's a single stock future in
16 "CARLB" which I believe is Carlsberg.

17 Correct?

18 A Yes.

19 Q You see where it says "BClear flex
20 F-U-T-S?"

21 A Yes.

22 Q This is an example of one of the
23 futures that you stated in your report were
24 actually executed on an exchange and were
25 real.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 105

1 Right?

2 A That is correct, yes.

3 Q Okay. Let's turn to the following
4 page ending in Bates number 75374. Again,
5 we're still in Exhibit 5217.

6 Do you have that in front of you?

7 A Yes.

8 Q This is a "Cash Equity
9 Confirmation."

10 Right?

11 A Yes.

12 Q And this is attached to the same
13 e-mail.

14 Right?

15 A It's consecutive Bates numbers. I
16 guess that's how it was produced.

17 So I'm assuming it was attached to
18 the e-mail.

19 Q Okay. It's also a confirmation
20 from FGC.

21 Right?

22 A Yes.

23 Q And this one is for a cash equity
24 transaction.

25 Right?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 106

1 A Correct.

2 Q And in your report, you say that
3 the plans never actually purchased these
4 shares because you say you did not locate any
5 evidence of share holdings.

6 Right?

7 A Correct.

8 Q Looking at these confirmations from
9 FGC, the first one I showed you, you say that
10 shows a real transaction.

11 Right?

12 A Correct.

13 Q And the second one, according to
14 you, shows a fake transaction.

15 Right?

16 A Correct. Fictitious or fake, yes.

17 Q Okay. Both are issued by FGC.

18 Right?

19 A Correct.

20 Q Both are titled "Confirmation."

21 Right?

22 A Both have the word "confirmation"
23 in them, correct.

24 Q If I'm an investor who received
25 this e-mail with these confirmations, is

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 107

1 there any way to know by looking at these
2 documents that the first page I showed you is
3 about a real transaction, and the second page
4 is about what you claim is a fictitious
5 trade?

6 MR. WEINSTEIN: Objection to form.

7 A Again, I don't know what -- you
8 said, "Would the purchaser that received
9 these know?"

10 Is that -- was that the preface to
11 your question?

12 Q "The investor," yes.

13 A So again, I don't know what the
14 investor would be thinking or not. I'm not
15 testifying -- I'm not here to testify about
16 what someone knew or didn't know in that
17 regard.

18 Q Let's go back to the first page
19 that shows the futures confirmation.

20 Okay?

21 A Okay.

22 Q This shows a futures price of DKK,
23 Danish kroner, 583.4300.

24 Right?

25 A Correct.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 108

1 Q And this future was cleared through
2 J. P. Morgan.

3 Correct?

4 A It doesn't say on here, but my
5 recollection is they were cleared through
6 J. P. Morgan. There were actual J. P. Morgan
7 documents that showed that they cleared.

8 Q And the name of the exchange is
9 something called Euronext.

10 Correct?

11 A Correct.

12 Q Are you aware of whether Solo
13 Capital was able to clear this trade?

14 A Whether Solo Capital, through
15 J. P. Morgan acting as their sub-custodian?

16 Is that what you're asking?

17 Q Yes.

18 A Yes, it was my understanding that
19 trade -- those trades cleared.

20 Q And --

21 A To be clear on the record, the flex
22 futures.

23 Q Right. You're referring to this
24 page we've been looking at for the past
25 minute or two that says "Equity Futures

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 109

1 Confirmation" at the top.

2 Right?

3 A Correct. Bates stamp ending in
4 373.

5 Q And Solo Capital was not a member
6 of BClear.

7 Right?

8 A That was my understanding, correct.

9 Q Do you know if J.P. Morgan was a
10 member of BClear?

11 A Sitting here today, I don't know
12 specifically one way or the other.

13 Q You didn't look into that in
14 connection with your work here?

15 A I don't recall looking into it. I
16 recall seeing the statement from J.P. Morgan
17 where these trades actually occurred as
18 sub-custodian.

19 Q It wasn't important for you to
20 understand why Solo used J.P. Morgan for
21 these services?

22 A No, not necessarily, no. My
23 understanding is they were using J.P. Morgan
24 because Solo couldn't clear certain
25 transactions.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 110

1 That was my general understanding.

2 But I didn't investigate that further.

3 Q And they couldn't do so because
4 they didn't have a BClear membership?

5 Is that your understanding?

6 A I don't know whether it was because
7 of that or whether they just weren't
8 registered properly or had the authority to
9 do so. But they needed -- my understanding
10 was they needed a sub-custodian to -- like
11 J.P. Morgan to handle this for them.

12 Q Okay. Let's keep that tab handy
13 and we'll go over to -- but we'll go over to
14 5218.

15 MR. BONGIORNO: Let's mark as the
16 next exhibit what is at Tab 5218.

17 (Whereupon the above mentioned was
18 marked for Identification.)

19 Q This is an e-mail from FGC to the
20 Bernina plan dated August 21st of 2013.

21 Do you have that in front of you?

22 A Yes.

23 Q Okay. Do you recall whether or not
24 you've seen this one before?

25 A It's possible. I don't recall

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 111

1 specifically this document, but it looks
2 familiar.

3 Q Okay. Flip behind the blue sheet.
4 There's an attachment of an "Equity Futures
5 Confirmation."

6 Do you see that?

7 A Yes, I see that.

8 Q It's for the purchase of 6,000
9 futures contracts in Carlsberg.

10 Do you see that?

11 A I do see that, yes.

12 Q And the price of the futures
13 contract listed here is Danish kroner,
14 561.4700.

15 Right?

16 A Correct.

17 Q And if you turn back to the futures
18 confirm at 5217, that was confirmation for
19 the sale of 6,000 futures contracts in
20 Carlsberg.

21 Right?

22 A Yes. The one on Bates ending 75373
23 was for a sell, and this was for a buy,
24 Bates 8403.

25 Q Right. And the sell was for Danish

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 112

1 kroner, 583.4300.

2 Right?

3 A Yes.

4 Q So if we take the price of the
5 futures purchase at Exhibit 5218 and the
6 price of the futures sale at Exhibit 5217,
7 that's the difference between 561.4700 and
8 583.4300.

9 Right?

10 A Correct.

11 Q So Bernina would have made a profit
12 of Danish kroner -- I'll do the math for
13 you -- 21.96 per share on this combination of
14 sale and later purchase.

15 Right?

16 A That's correct, yes.

17 Q And each contract was for 100
18 shares.

19 Right?

20 A Yes. The multiplier is a hundred.

21 Q Okay. Mr. Dubinsky, in your
22 opening report, you give several reasons why,
23 in your view, the pension plan trades were
24 not real.

25 Right?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 113

1 A Yes.

2 Q And one of those reasons you say is
3 that Solo Capital prearranged all of the
4 transactions.

5 Right?

6 A Yes.

7 Q If we go to your opening report at
8 Page 78, Paragraph 205?

9 A Yes.

10 Q Are you with me?

11 A Yes.

12 Q Okay. Second sentence of Paragraph
13 205 of your report, "Specifically,
14 Solo Capital selected the particular stock or
15 security that was purportedly going to be
16 traded, the allocation of shares to each
17 plan, and the information related to which
18 broker and other counterparties would be used
19 for the hedging in stock loan transaction."

20 Do you see that?

21 A Yes.

22 Q So as you say, Solo selected the
23 stocks and securities before the plans
24 traded, and the brokers and counterparties
25 that those plans could use for the hedging

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 114

1 transactions that the plans would do.

2 Right?

3 A That's what I stated there, yes.

4 Q Okay. But you say in your reply
5 report that the futures contracts traded by
6 the plans, one category of hedging
7 transactions, those were real.

8 Right?

9 A Correct. Those actually occurred,
10 yes.

11 Q Even though they were prearranged
12 by Solo.

13 Right?

14 A That's correct, yes.

15 Q Let's look further down on this
16 Page 78, Paragraph 207. I think it goes on
17 to the next page. I want to read the last
18 sentence there.

19 "Further, the fact that 34 plans in
20 this example were participating in one
21 transaction -- in this one transaction also
22 shows that the transactions were not custom
23 tailored to each plan based on their own risk
24 profile, investment strategy, or time
25 horizon, but rather, these transactions were

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 115

1 simply carved up and doled out to each plan
2 by Solo Capital."

3 Do you see that?

4 A Yes. You read that correctly.

5 Q The same can be said of the futures
6 trades.

7 Right?

8 MR. WEINSTEIN: Objection to form.

9 A I would have to go back and look
10 and see if, on the spreadsheets I was talking
11 about, the futures were allocated that way.
12 Sitting here today, I don't recall.

13 But they're all part --
14 nonetheless, the futures were all part of the
15 transaction that was -- that Solo was
16 attempting to effectuate.

17 Q Well, all 34 plans used the hedging
18 trade as part of their overall transaction.

19 Right?

20 A Let me just see. One second here.
21 (Witness reviewing.)

22 No. I think this series was using
23 the forwards, not the futures when we're
24 looking at the example that I gave. So
25 that's why I think the ones with the futures,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 116

1 which were earlier, which were traded at
2 J.P. Morgan, I'd have to go back and see if
3 those were carved up on a spreadsheet like I
4 was describing here.

5 Q Okay. You're not sure whether or
6 not each of the plans engaged in a futures
7 transaction as a hedge as part of the overall
8 transaction, sir?

9 A No, that wasn't my testimony. But
10 you're asking a different question.

11 Q Okay.

12 A I was answering --

13 Q Sorry. What is --

14 A I was answering your earlier
15 question and I said your earlier transactions
16 that used futures for it was part of the
17 chain here that I was describing where it was
18 carved up. That's what we were talking about
19 and that's the questions that you were asking
20 on.

21 These series where it says were
22 simply carved up were dealing with the
23 forwards. So these were later, later trades.

24 Q Okay. Let's talk about the
25 forwards, then.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 117

1 You also excluded forwards
2 contracts from your review in your opening
3 report.

4 Right?

5 A No, I didn't exclude them from my
6 review. I footnoted those in the report that
7 I was not opining on those.

8 Because, again, the investigation
9 that I was trying to conduct, that I did
10 conduct, was focusing on whether there was
11 evidence that the shares -- the Danish shares
12 actually existed, and whether if, in fact,
13 the shares actually existed, dividends were
14 actually paid.

15 And I said in the footnote that it
16 didn't change my opinion, looking at
17 the -- whether it was the flex futures or
18 forwards as to whether that meant anything in
19 the transaction to it.

20 So it wasn't that I didn't review
21 them. I knew there were futures, I knew
22 there were forwards purportedly used.

23 I just didn't go into detailed
24 review on those particular parts of the
25 transaction because I didn't need to.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 118

1 Q Because you say they had no bearing
2 on whether the plans purchased or owned
3 shares or received dividends.

4 Right?

5 A Correct.

6 Q The forward contracts, those were
7 not executed on an exchange.

8 Right?

9 A That is correct.

10 Q But they were still real contracts,
11 weren't they?

12 A Well, I think you're asking for a
13 legal conclusion. I don't know whether they
14 were legitimate contracts or not.

15 There were -- there were
16 forward -- forwards that were purportedly
17 used in the transaction. But beyond that, I
18 can't comment.

19 Q Well, you're willing to say that
20 the futures contracts were real.

21 Right?

22 A Yes, because I saw those. There
23 was actual evidence from the -- J.P. Morgan
24 that those existed.

25 Q You don't view that as a legal

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 119

1 conclusion, but you view whether or not the
2 forward contracts were real as a legal
3 conclusion?

4 Is that your testimony?

5 MR. WEINSTEIN: Objection to form.

6 A No, I think there's a difference.
7 I was looking at the existence and whether
8 there was third-party cooperating evidence
9 for the -- for the futures, which there was.

10 Q Okay. Let's look at Tab 5219.

11 MR. BONGIORNO: Mark that as 5219.
12 (Whereupon the above mentioned was
13 marked for Identification.)

14 Q Do you have that in front of you?

15 A I do, yes.

16 Q Do you know whether you've seen
17 this document before?

18 A I probably did because it deals
19 with RJM and I looked at RJM. I think that
20 was one of the bellwethers that was selected.

21 So yes, I think I've seen this.

22 Q Okay. And this is -- it says it's
23 an equity forward transaction at the top of
24 the page.

25 Do you see that?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 120

1 A Yes.

2 Q It's dated February 27, 2014?

3 A Yes.

4 Q And it's an agreement between
5 Amalthea Enterprises Limited and the RJM
6 Capital Pension Plan.

7 Correct?

8 A Yes.

9 Q On the first page, you see
10 something entitled "General Terms?"

11 A Yes.

12 Q Okay. And on the second page, you
13 see sections entitled "Equity Terms" and
14 "Settlement Terms."

15 Right?

16 A Yes.

17 Q You don't offer any opinion on the
18 terms of this contract, do you?

19 A No, I don't.

20 Q You don't know whether or not
21 counsel was consulted in drafting of this
22 forward contract, do you?

23 A I don't.

24 Q Do you know whether or not this
25 document was negotiated and accepted by the

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 121

1 parties?

2 A Again, it's signed by two people,
3 but I don't know about the negotiation
4 between the two parties. I think
5 there's -- I recall there was some testimony
6 that none of these terms, that some of the
7 people in the pension plan didn't know what
8 the terms were and hadn't negotiated, but
9 that's my general recollection.

10 Q That's not part of -- that doesn't
11 form any part of the basis for your opinion
12 in this case, what you just said, does it?

13 A No. No, it doesn't. I think just
14 from the standpoint of -- it certainly -- no,
15 it goes to the facts that come out at trial,
16 it would be interesting that you had pension
17 plans that are newly formed and newly formed
18 LLCs, if, in fact, that that's the testimony
19 that comes out at trial.

20 That would be, to me, anyway, very
21 telling about the nature of these
22 transactions.

23 Q Do you know when RJM Capital was
24 formed?

25 A Not off the top of my head. I'd

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 122

1 have to go back and see if it's on one of the
2 exhibits to my report, if you give me a
3 minute. It might be.

4 MR. WEINSTEIN: Just to be clear,
5 are we talking about the LLC or the
6 plan?

7 MR. BONGIORNO: RJM Capital LLC
8 Pension Plan, which is the signatory to
9 this document.

10 A Give me one second.

11 (Witness reviewing.)

12 RJM was -- RJM Capital LLC. Oh,
13 the pension plan. Let me see if I've got the
14 plan.

15 Q No, that's okay. You can answer
16 with regard to RJM Capital LLC since it looks
17 like you found that answer.

18 A Well, the pension plan was formed
19 on February 1, 2013, it looks like by Mr. --

20 Q What about the -- sorry. I didn't
21 mean to interrupt you, sir. Go ahead.

22 A And the related LLC appears to have
23 been formed July 17, 2007.

24 Q Okay. So the LLC itself had been
25 in existence for six years or so at this

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 123

1 point?

2 A In this particular example. I was
3 looking at Exhibit 1.01 in my report.

4 If you look at that, you can see
5 many of the LLCs were formed right around the
6 time the transactions and pension plans --
7 related pension plan was formed.

8 This one happens to be a little
9 bit older.

10 Q Six years older?

11 A Yes. I mean, you can see, for
12 instance, on that same exhibit, Trade and
13 Investments LLC Pension Plan, formed
14 February 1, 2013, the LLC is a day before
15 that, January 30, 2013.

16 So a lot of them, when you look at
17 the -- this is just the Argre plans. But if
18 you look at the Kaye Scholer plans, a lot of
19 those dates are very close in nature.

20 Plan formation date, LLC formation
21 date, very close.

22 Q But the RJM Capital LLC was formed
23 in 2007, you said?

24 A Correct.

25 Q And this document is from 2014.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 124

1 Right?

2 A I lost my place in the documents.

3 What was the document that we were
4 looking at?

5 Q Sorry. We were looking at Exhibit
6 5219, the forward contract.

7 A Yes. This forward was February 27,
8 2014.

9 Q And I think we talked about,
10 before, how you reviewed over 2,500 trades.

11 Right?

12 A Yeah, and I just want to clarify
13 the last answer before we move on.

14 Q Sure.

15 A Looking at 5219, it's the parties.
16 When you had asked me had the parties signed
17 this, I guess it's Amalthea Enterprises had
18 signed and someone on behalf of RJM Capital
19 LLC Pension Plan.

20 So the pension plan was formed
21 about a year -- it looks like a year prior to
22 this document.

23 What was your next question?

24 Q It was -- we were -- I was just
25 kind of setting the table for the fact that

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 125

1 you reviewed over 2500 trades.

2 Right?

3 A Right, yes.

4 Q Okay.

5 A Well, I would say 2559
6 transactions. Each transaction --

7 Q Sorry.

8 A -- had different legs to it.

9 Q And you focused primarily on what
10 the parties were referring to as "bellwether
11 plans."

12 Right?

13 A Correct. Well, I had looked
14 at -- in the report, I described the
15 bellwether plans, but I had looked at
16 transactions in the documents for 2,559
17 transactions.

18 But the bellwether plans, as I
19 understand it, were agreed upon between the
20 parties as sort of demonstrative of the
21 transactions I think the judge had asked the
22 parties to agree on.

23 That's my understanding.

24 Q Okay. In your view, is the -- all
25 2,559 of what you refer to as the Solo trades

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 126

1 were basically clones of each other.

2 Right?

3 A Well, I would say basically. I
4 mean, there were -- there was a simple loop
5 in the beginning, and then a complex loop
6 later on where there were different layers
7 added.

8 But when you look at the purported
9 substance of all of the transactions and the
10 way it was supposed to work, I think it's
11 fair to conclude they're all clones,
12 basically clones.

13 Q And one of those transactions is
14 the March 2013 transaction done by the
15 Bernina plan in shares of Carlsberg.

16 Right?

17 A Correct.

18 Q When you reviewed this transaction,
19 you reviewed some of the underlying documents
20 and cited them in your report.

21 Right?

22 A Correct.

23 Q Why don't we look at Figure 10 in
24 your report, your opening report,
25 Exhibit 5200. It's on Page 52.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 127

1 A Hold on, there's -- oh, it's just a
2 fire top, okay.

3 What page?

4 Q It is Page 52, and I'm pointing you
5 to Figure 10.

6 A 5200, Figure 10, which is Page 50.

7 Q Let me double-check that on my end.

8 Yeah, so you are correct. Page 50,
9 Figure 10.

10 The document that is shown here,
11 you call this a "Trade Confirmation from
12 Solo Capital to the Bernina Plan."

13 Do you see that?

14 A Yes, that's how I labeled it, yes.

15 Q Okay. The subject line of this
16 e-mail says "Account BER 01 Trade Approved."

17 Right?

18 A Correct.

19 Q This is not an actual trade
20 confirmation, is it? It's just an e-mail.

21 Right?

22 A That's correct, yes.

23 Q Now, let's look at Tab 5217.

24 A Okay.

25 Q I think this has already been

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 128

1 marked, but -- marked as Exhibit 5217 as
2 well.

3 Turn to the attachment at the
4 second page, "Cash Equity Confirmation."

5 Do you see that?

6 A Yes.

7 Q It ends in Bates 75374.

8 Right?

9 A Yes.

10 Q And this was sent by FGC Securities
11 LLC?

12 A Yes.

13 Q And they're located in New York.

14 Right?

15 A That's what it says, yes.

16 Q Okay. And if you look at Tab 5220?
17 And we'll mark that next as Exhibit 5220.

18 MR. BONGIORNO: Mark this
19 Exhibit 5220.

20 (Whereupon the above mentioned was
21 marked for Identification.)

22 A Yes.

23 Q This is a printout from a service
24 called BrokerCheck.

25 Have you ever heard of BrokerCheck?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 129

1 A Yes.

2 Q And you see that FGC reports to
3 FINRA.

4 Right?

5 A They're -- it says they're
6 registered with FINRA, yes.

7 Q And FGC is located in New York?

8 A I mean, I can't confirm factually.
9 All I can tell you is it says at the
10 time -- let me see if there's a date on what
11 you're asking me, first of all. 5220.

12 I don't know when this -- is there
13 a date on this?

14 Q It's at the end. It says,
15 "Copyright 2022 FINRA."

16 A Yes.

17 Q On the very last page.

18 A Right.

19 Q For what that's worth.

20 A Right. I mean, it indicates the
21 main address is in New York.

22 Q And it says, "SEC registration
23 approved November 26, 2012."

24 Do you see that?

25 A Yes.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 130

1 Q Let's go back to -- well, let's go
2 actually to Tab 5221.

3 MR. BONGIORNO: Mark that as the
4 next exhibit, 5221.

5 (Whereupon the above mentioned was
6 marked for Identification.)

7 A Okay.

8 Q This is a SEC document, "Investor
9 Bulletin: How to Read Confirmation
10 Statements."

11 Do you see that? Do you have that
12 in front of you, sir?

13 A Yes, I have it, yes.

14 Q Okay.

15 A Yes, it's titled, it says,
16 "Investor Bulletin: How to Read Confirmation
17 Statements."

18 Q Okay. And then it says, "What is a
19 confirmation statement?" And I'll just read
20 that.

21 "Under SEC rules, whenever you
22 purchase or sell a security, the broker
23 dealer through whom you bought or sold the
24 security is generally required to give or
25 send you a written notification or

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 131

1 confirmation with information about the
2 transaction. The confirmation statement
3 contains basic information about the
4 transaction, such as the identity of the
5 security, the amount of the securities you
6 purchased or sold, and the price that you
7 paid or received."

8 Do you see that?

9 A Yes, I see that.

10 Q Okay. Looking back at Tab 5217, it
11 says that the transaction was a buy of
12 600,000 shares of Carlsberg by Bernina at a
13 per share price of Danish kroner 586.3316.

14 Right?

15 A Yes, I see that.

16 Q And it does not specify the
17 identity of any counterparty to this trade.

18 Right?

19 A That is correct.

20 Q It does not say whether the seller
21 is a long seller or a short seller.

22 Right?

23 A That is correct.

24 Q And it certainly doesn't say
25 anything about the shares being fictitious.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 132

1 Right?

2 A That is correct.

3 Q And underneath --

4 MR. WEINSTEIN: Michael, can you
5 just hold on?

6 THE WITNESS: There's a fire
7 announcement.

8 MR. BONGIORNO: Okay. I know we're
9 in the middle of an exhibit, but we're
10 getting close to having gone for an
11 hour. Do you want to take a break now?
12 My hope is that the drilling that's
13 going on next door to us will expire as
14 well.

15 MR. WEINSTEIN: Our fire
16 announcement ended, but -- so it's up to
17 you. If you want a few more minutes on
18 this exhibit, go ahead. If not, we can
19 take a break.

20 MR. BONGIORNO: Yeah, sure. Thank
21 you. Why don't we just wrap this up and
22 then we'll take a break.

23 Q At the top of the page, underneath
24 where it says "Cash Equity
25 Confirmation" -- are you with me?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 133

1 We're on Tab 5217. Sorry.

2 A Yes. Bates number 75374.

3 Q I'm sure you're right, but I just
4 want to make sure.

5 A Okay.

6 Q Okay. Underneath where it says
7 "Cash Equity Confirmation," can you read that
8 sentence?

9 A Yes. It says -- do you want me to
10 read it out loud or just read it to myself?

11 Q Please. Yeah, read it out loud,
12 please.

13 A Okay.

14 "Client and FGC Securities agree
15 that this confirms the terms and conditions
16 of the following cash equity transaction."

17 Q Thank you. I'm just getting lazy
18 here before lunch. Normally, I would have
19 read it to you --

20 A Okay.

21 Q -- but here we are.

22 And we saw from the cover e-mail
23 that this confirmation was e-mailed to the
24 Bernina plan, correct? If you go back to the
25 very first page of this exhibit?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 134

1 A Yeah. Well, it was e-mailed --
2 yes, to an authorized representative, Adam
3 LaRosa.

4 Q And again, there's nothing on the
5 face of this confirmation that would tell an
6 investor that these shares didn't exist.

7 Right?

8 A Well, nothing -- I guess in your
9 hypothetical or in your question, are you
10 assuming that the plan has no other
11 information about anything, just like in a
12 vacuum they get this? Because that's not
13 what this --

14 Q I'm asking you about this document.

15 A Well, I think just -- I don't think
16 that's -- I don't think that hypothetical or
17 that question -- it's hard for me to answer.
18 Let me put it this way.

19 If I'm a plan and I get a cash
20 equity confirmation for millions and millions
21 of dollars, knowing that I don't have money
22 in my plan, I mean, certainly bells and
23 whistles or red flags are going to go off in
24 my head as to how can I possibly do this kind
25 of transaction? There's nothing that says

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 135

1 it's fictitious on the face. It doesn't say,
2 "This is a fictitious transaction, this is a
3 fraud, this is a fake."

4 But, you know, certainly if I got
5 this and I'm an investor in a newly-formed
6 pension plan with very little money, I'm
7 going to scratch my head pretty hard and say,
8 "Well, how am I able to execute this?" That
9 would be my -- my reaction.

10 I can't jump in the head of this
11 Adam LaRosa and what he might have thought or
12 what anybody else thought because I can't do
13 that.

14 All I can tell you is what -- you
15 know, if I got it, what I would have thought.

16 Q Okay. But I didn't ask you what
17 you would have thought if you got this, sir.
18 Okay?

19 I asked you whether or not there's
20 anything on the face of this confirmation
21 that would tell an investor that the shares
22 didn't exist?

23 MR. WEINSTEIN: Objection to form,
24 asked and answered.

25 A You just asked a different question

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 136

1 this time, a slightly different. But no,
2 there's nothing on the face itself that would
3 tell you the shares don't exist.

4 But it certainly would cause some
5 alarms to go off in my mind if I received it.

6 Q Okay. But you're not testifying as
7 to the state of mind of anybody in this case,
8 are you, sir?

9 A No, but you asked me is there
10 anything on the face of this that would -- I
11 don't know if you said the word "indicate" or
12 "would show," I forgot the term you used, and
13 I'm putting -- I'm trying to put myself in
14 the position of somebody that would have
15 received this.

16 And I said, in my opinion, yeah, it
17 would certainly -- I would question it. But
18 no, it doesn't say on the face of it there's
19 anything fictitious or that these are a
20 fraud.

21 Q Let's -- what you just said is not
22 an opinion that you're offering as an expert
23 in this case, is it, sir?

24 A Well, one, you just asked me to
25 look at a document and I answered that. I

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 137

1 think certainly I'd have to go back through
2 the report.

3 I think I talk about the
4 transaction and the fact that the LLCs, most
5 of them, were newly formed, the pension plans
6 didn't have liquidity. So in the context of
7 that, someone would certainly have to
8 question how could they possibly be doing
9 this type of transaction.

10 But I'm not opine -- I can't opine
11 on what people thought at that time, that
12 those are going to have to be facts that come
13 from fact witnesses at trial.

14 I can't jump into their head.

15 Q When you say "someone would have to
16 question," is that a legal requirement that
17 they'd have to question it --

18 A No, I think just --

19 MR. WEINSTEIN: Objection.

20 Q -- or is that just your opinion?

21 A Just general common sense. I mean,
22 if you -- you know, it's just -- as a newly
23 formed pension plan with little or no money,
24 call it 10,000, \$40,000, how in the
25 world -- if I'm putting myself, and I get

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 138

1 this cash equity confirmation, somebody says,
2 "Well, Dubinsky, you have this pension plan
3 and you're going to be able to do this
4 transaction, and here's the confirm," I'm
5 like, "What? I don't have any money, how are
6 we doing this?"

7 I mean, that would be the first
8 line of inquiry I would go to. But again,
9 I -- you know, people, I think, have
10 testified in this case about what they did,
11 and the facts will be the facts at trial.

12 Q This trade that we were discussing,
13 the date of the trade was March 21, 2013.

14 Right?

15 A Correct.

16 Q Okay. Do you know when Carlsberg's
17 annual general meeting was in 2013?

18 A I don't know off the top of my
19 head. I mean, they were all pretty close
20 to -- these purported trades were all pretty
21 close to the dates of the general assembly
22 meetings, if I recall.

23 Q Okay. If you look at Dr. Carr's
24 reply report at Exhibit 5102, there's an
25 exhibit attached to that report, Exhibit 4.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 139

1 Hopefully, you have the exhibits to
2 his report in your notebook?

3 A Yes, I do have it.

4 Q Do you -- were you able to find
5 Exhibit 4 to Dr. Carr's reply report,
6 Mr. Dubinsky?

7 A Yes.

8 Q Okay. Do you see there where it
9 indicates for Carlsberg the annual general
10 meeting was March 21, 2013?

11 A Yes.

12 Q So the ex-dividend date, per
13 Bloomberg, Dr. Carr has listed as March 22,
14 2013.

15 Right?

16 A Yes.

17 Q You don't have any basis to dispute
18 these dates and this exhibit, do you?

19 A I haven't gone through and verified
20 them all, but I do recall that from the dates
21 that I found, the equity purchase trade date,
22 purported trade date, usually occurred at the
23 end of trading, at the end of the day, right
24 around -- either on or right around the AGN
25 date.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 140

1 So these, just looking at them,
2 look right. But one, I guess, the TDC looks
3 a little off. You know, again, I didn't go
4 back and verify these dates.

5 Q You say that you believe the trades
6 occurred at the end of the trading day?

7 A Correct.

8 Q Is that your testimony?

9 A That's correct.

10 Q Okay. Let's go to -- back to your
11 Figure 10 in Exhibit 5200, which is your
12 opening report?

13 A 5200, Page 50.

14 Q Page 50, which is not Page 52, as
15 you corrected me before.

16 A Right.

17 Q Do you have Figure 10 in front of
18 you?

19 A I do.

20 Q Do you see the time that the e-mail
21 was sent?

22 A Yes.

23 Q What is it?

24 A 1300 hours. It was 1312 --

25 Q Do you know what times -- sorry.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 141

1 A No, I was just saying the minutes
2 and seconds.

3 Q 1300 hours, 12 minutes, 20 seconds.

4 A Right?

5 A Correct.

6 Q Do you know what time zone that is?

7 A I don't.

8 Q Do you know whether or not this
9 approval came before or after the annual
10 general meeting ended?

11 A I don't know one way or the other.

12 Q And that doesn't matter either way
13 for your opinions in this case, I take it?

14 A No, that wouldn't matter.

15 Q This trade occurred one day prior
16 to the ex dividend date, though.

17 A Right?

18 A I believe that's correct. I'd have
19 to look -- let me just see if I say when the
20 ex-dividend date was on this.

21 (Witness reviewing.)

22 A I'm sorry. I'm looking at a big
23 binder that's on the side.

24 A I don't know if I have the
25 ex-dividend date here. I was just looking

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 142

1 for it quickly.

2 Q I can point you to Dr. Carr's
3 report if you're comfortable with that. We
4 just looked at what it said in his report.

5 A Sure. What exhibit was that again?

6 Q It was Exhibit 4 to his reply
7 report, which is 5102.

8 MR. WEINSTEIN: And then, maybe,
9 Michael, once we've established what
10 that date is, we can take that break?

11 MR. BONGIORNO: Sure.

12 A (Witness reviewing.)

13 So Dr. Carr has listed the
14 ex-dividend date per Bloomberg as March 22,
15 2013. So the purported trade would have
16 occurred one day before.

17 Q Okay.

18 MR. BONGIORNO: Why don't we go off
19 the record.

20 THE VIDEOGRAPHER: Stand by. The
21 time is 11:57 a.m. and we're going off
22 the record.

23 (Lunch recess taken.)

24 THE VIDEOGRAPHER: Stand by. The
25 time is 12:42 p.m. and we're back on

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 143

1 record.

2 Q Mr. Dubinsky, I'm going to read you
3 something and you can tell me if you agree
4 with it.

5 "As long as a legal binding
6 agreement has been made on the purchase and
7 payment of shares on or before the annual
8 general meeting, the purchaser is entitled to
9 a dividend declared at that meeting."

10 Do you agree with that?

11 MR. WEINSTEIN: Objection.

12 A One, I think that it's calling for
13 a legal conclusion. As I said, I'm not a
14 lawyer.

15 But I think in very general terms,
16 assuming that the stock is being delivered,
17 that you would -- that the issuer would be
18 paying a dividend to the holder of record
19 that owns the stock after that date.

20 Q Did you review the testimony of the
21 SKAT designated corporate witness in this
22 case?

23 A No, I did not.

24 Q Are you aware that there was a SKAT
25 corporate witness who was designated to

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 144

1 testify in this case on behalf of SKAT?

2 A That was my general understanding.

3 I don't know if it was under the 30(b) (6) or
4 not.

5 But that was my understanding, that
6 somebody from SKAT testified.

7 Q You weren't interested in knowing
8 what that witness had to say?

9 A No. I don't think it was germane
10 to the investigation I was asked to conduct,
11 and I don't see that SKAT would have
12 information as to the custodian and where the
13 shares were, and whether the dividend was
14 actually paid in these transactions.

15 Q So you don't know whether the SKAT
16 designee said anything about trade
17 settlement.

18 Right?

19 A I don't know one way or the other.

20 Q You don't know whether or not the
21 statement I just read to you was made by the
22 SKAT corporate designee.

23 Right?

24 A That would be correct. I don't.

25 Q But you don't know what factual

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 145

1 representations the SKAT corporate designee
2 made during his testimony.

3 Correct?

4 A That is correct. I didn't see his
5 testimony and didn't read it.

6 Q Let's go to -- back to your opening
7 report, Exhibit 5200, Paragraph 131.

8 A Okay.

9 Q It's on Page 39, I think.

10 A Okay.

11 Q Can you read that paragraph to
12 yourself? And I'll ask you some questions.

13 A Which paragraph was it?

14 Q 131.

15 A Okay.

16 (Witness reviewing.)

17 Okay.

18 Q Just a question for you.

19 You can see, in the first sentence
20 of that paragraph, you reference "actual
21 dividends?"

22 A Yes.

23 Q When you say here that the pension
24 plans did not receive any actual dividends,
25 you're not offering any kind of opinion about

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 146

1 the plans' entitlement to dividends, are you?

2 A That's correct. The -- I'm sorry.

3 Something just beeped.

4 I think that's a legal conclusion.

5 In that regard, I was just looking for
6 evidence whether the plans actually received
7 any actual dividends in this transaction.

8 Q Let's go back to Exhibit 5217.

9 A Okay.

10 Q And we'll go to the last page of
11 that document.

12 A The one Bates --

13 Q "Cash Equity." Sorry.

14 A Yeah, I was going to say, the one
15 ending in 75374 Bates number?

16 Q Yes.

17 A Okay.

18 Q The price you see there, "Trade
19 Price, 586.3316," that was a market price at
20 that time.

21 Right?

22 A I don't recall specifically on this
23 whether that was the closing price on that
24 day. Typically, the trades were purportedly
25 executed or approved during the day and then

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 147

1 my recollection was it was the end of day
2 trading price that was used.

3 I don't know specifically on this
4 one. I would have to go back and look.

5 Q You're not aware of any trades that
6 were made at something other than the market
7 price.

8 Is that a fair statement?

9 A I would agree with you, again, in
10 the context of we had the agreement earlier,
11 that I'm classifying these as purported
12 trades.

13 Q Understood. Understood.

14 In the course of your review for
15 your reports, you saw account statements
16 issued by Solo custodians.

17 Right?

18 A Yes.

19 Q And you agree that Solo Capital,
20 Old Park Lane, Telesto Markets and West Point
21 Derivatives were all registered with the FCA
22 at the time of the trading discussed in your
23 reports.

24 Right?

25 A I believe that's true.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 148

1 Q Okay. Let's go to Tab 222 in your
2 binder.

3 MR. BONGIORNO: I will have that
4 marked as the next exhibit, 5222.

5 (Whereupon the above mentioned was
6 marked for Identification.)

7 A Okay.

8 Q Do you recognize this document?

9 A (Witness reviewing.)

10 Yeah.

11 Q This is an "Open Position
12 Statement" and it's dated March 31, 2013.

13 Right?

14 A Correct.

15 Q And it's from Solo Capital to the
16 Bernina Pension Plan.

17 Right?

18 A Yes. Solo Capital Partners LLP,
19 yes.

20 Q And if you -- if you look at the
21 call on GC-1 that starts with "Trade Date,"
22 and another, "Settlement Date?"

23 A Which page are you on? The first
24 page?

25 Q Yeah. I'm sorry. Second page.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 149

1 A Okay. I see a column, "Trade Date"
2 and "Settlement Date," yes.

3 Q And you see another column that
4 says "Nominal?"

5 A Yes.

6 Q Okay. And if you go down five
7 entries from the top, you'll see an entry for
8 Carlsberg.

9 Do you see that under
10 "Description?"

11 A Yes.

12 Q And that reflects a buy of 600,000
13 shares of Carlsberg.

14 Right?

15 A Correct.

16 Q And the price listed there is
17 586.3316.

18 Right?

19 A Correct.

20 Q And if you look toward the top of
21 the page -- sorry, give me one second. Let's
22 go to the last page of the document, the one
23 that ends in 32543.

24 A Okay. I see that.

25 Q And if you look towards the top of

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 150

1 the page, you see an entry for "Dividend
2 CARLB."

3 Do you see that?

4 A Yes. I see an entry, yes.

5 Q Okay. And CARLB, that's the ticker
6 for Carlsberg.

7 Is that your understanding?

8 A Correct.

9 Q And this entry reflects that the
10 Bernina plan's account was credited with a
11 dividend amount for Carlsberg shares on
12 March 27, 2013.

13 Right?

14 A This would indicate that someone at
15 Solo Capital made an entry on here to reflect
16 a dividend from Carlsberg. I don't believe
17 it shows that it was received in cash, but
18 there's an entry on there.

19 Q But you don't have any basis to
20 dispute that the Bernina plan received this
21 account statement from Solo Capital.

22 Right?

23 A I don't know one way or the other.

24 Q And this -- you'll agree that this
25 document shows a book entry reflecting a

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 151

1 purchase of shares of Carlsberg stock.

2 Right?

3 A You're back to Page 2? Is that
4 what you're asking?

5 Q Yeah.

6 A Yes, it shows a book entry.

7 Q A book entry reflecting a purchase
8 of shares of Carlsberg stock.

9 Correct?

10 A Correct.

11 Q And then, on the page we were
12 looking at just before that, it shows a
13 credit to Bernina's account for a dividend in
14 Carlsberg stock.

15 Right?

16 A It shows an entry for that,
17 correct.

18 Q And none of your opinions rely on
19 any contention that plans like Bernina did
20 not get actual statements like this.

21 Right?

22 A Well, as I testified, I don't know
23 one way or the other whether the Bernina plan
24 received it or -- and if they did, who
25 received them, and, if they received them,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 152

1 whether they even looked at them.

2 I don't know one way or the other.

3 Q Okay. Let's go back to your
4 report. You opine that the transactions
5 conducted through Solo Capital were circular.

6 Right?

7 A Yes.

8 Q And let's go to Page 46 of your
9 opening report, Exhibit 5200.

10 A Okay.

11 Q And here -- sorry.

12 Are you there?

13 A Yes.

14 Q Okay. And here you're examining a
15 trade -- a transaction by the Bernina plan in
16 Carlsberg stock in March of 2013. And that's
17 the same trade that we've been discussing
18 just now.

19 Right?

20 A Correct.

21 Q You say that FGC Securities
22 purchased 600,000 shares of Carlsberg at
23 Danish kroner 586.3316 per share from an
24 entity called DDC Cayman.

25 Correct?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 153

1 A Correct.

2 Q And DDC Cayman, that's not one of
3 the U.S. pension plan investors.

4 Right?

5 A That is correct.

6 Q And this leg of the transaction is
7 shown in your Figure 9.

8 Right?

9 A (Witness reviewing.)

10 Correct.

11 Q And the documents shown in Figure 9
12 has an Elysium Bates number.

13 Right?

14 A Correct.

15 Q And we discussed earlier that the
16 Elysium documents are from Solo Capital's
17 files.

18 Right?

19 A Correct.

20 Q There's nothing on the face of this
21 document that you have shown here in Figure 9
22 that reflects that this e-mail was sent to
23 any U.S. pension plan.

24 Right?

25 A (Witness reviewing.)

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 154

1 It doesn't appear on the face of
2 it.

3 That's correct.

4 Q And as we discussed earlier, this
5 is not a trade confirmation.

6 Right?

7 A That's correct. This is a trade
8 approval, an e-mail setting forth all of the
9 terms of the purported trade.

10 Q By the way, did you look at
11 DDC Cayman's account records for all
12 financial institutions where it held accounts
13 other than Solo?

14 A I looked at whatever was available
15 in the record for DDC Cayman and looked at
16 that. And I certainly looked at the
17 DDC Cayman Solo accounts.

18 I think I talk about it in the
19 report. Maybe it's in the -- its either in
20 the rebuttal or reply report where I looked
21 at the open position statement to see if, in
22 the month prior to or the month of this
23 purported transaction, DDC Cayman had any
24 long position in Carlsberg.

25 Q At Solo?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 155

1 A At Solo, yes.

2 Q So you don't know if DDC Cayman had
3 holdings in Danish securities outside of
4 Solo Capital, do you?

5 A I haven't seen any evidence to that
6 and I haven't seen any evidence, if they did
7 in your hypothetical, how DDC Cayman would
8 have gotten the shares into the closed loop
9 at the Solo custodians. Because those shares
10 would have needed to transfer into the loop
11 transaction to be able to then be passed
12 around in a circular nature that they
13 purportedly were.

14 So I haven't seen any evidence to
15 that.

16 Q I'm asking you whether or not you
17 know whether DDC Cayman had holdings in
18 Danish securities outside of Solo.

19 That's my question.

20 A Right. And I think I answered that
21 saying I haven't seen any evidence that they
22 did, and even if they did have in your
23 hypothetical, I didn't see evidence where
24 they would have transferred that into the
25 Solo sub-custodians to effectuate the trade.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 156

1 And it wouldn't make sense anyway,
2 at that point, if -- well, I'll leave it at
3 that. I didn't see any evidence that they
4 transferred them in.

5 So I haven't seen any -- I haven't
6 seen any evidence they existed outside and I
7 didn't see any evidence from DDC Cayman that
8 they transferred shares from any outside
9 brokerage firm into the Solo structure.

10 Q So is it your testimony that it
11 does not matter to you whether or not
12 DDC Cayman held Danish shares in accounts
13 outside of Solo?

14 A No, that wasn't my testimony. I
15 said if there's evidence to that, I haven't
16 seen it. And certainly Dr. Carr hasn't
17 presented evidence of that.

18 And so there is no evidence in this
19 case to that. So your hypothetical, I
20 just -- it's not that it's not important to
21 me.

22 If somebody shows me that
23 DDC Cayman had these shares and how they were
24 entered into the structure, I'm happy to look
25 at it. If you have a document to show that,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 157

1 I'm more than happy to look at it.

2 Q But you'd be interested to know
3 whether or not DDC Cayman had holdings in
4 Danish securities outside of Solo Capital.

5 Is that a fair statement?

6 A No. The fair --

7 MR. WEINSTEIN: Objection, asked
8 and answered.

9 A The statement was if you have a
10 document showing that DDC Cayman had these
11 Carlsberg shares outside the structure and
12 documents to show how they were put into the
13 structure, I'm happy to look at that. I said
14 what I reviewed, I didn't see any, and
15 Dr. Carr apparently didn't have them either
16 or they'd be front and center.

17 I think that's pretty apparent.

18 Q Bernina purchased 600,000 shares of
19 Carlsberg at a price of 586.3316 Danish
20 kroner per share through FGC Securities,
21 right? That's on your Figure 10 on Page 50,
22 I hope?

23 A Correct.

24 Q And this e-mail went to the Bernina
25 Pension Plan.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 158

1 Correct?

2 A Well, I don't know if it actually
3 went to them or not. It's addressed to
4 somebody, Adam@Bernina P.com.

5 I don't know one way or another if
6 it actually went to them or not, and if it
7 did, if anybody read it or what they did with
8 it.

9 Q In another leg of the transaction,
10 the Bernina plan loaned shares to an entity
11 called Colbrook Limited.

12 Right?

13 A Correct.

14 Q That's in Figure 12 which I
15 believe, actually, is on Page 52.

16 Right?

17 A That is correct. And it's also
18 referenced in Figure 13.

19 Q And this e-mail, we can agree at
20 least, it was addressed to
21 Adam@Bernina P.com.

22 Right?

23 A Yes, we can agree on that.

24 Q And if you turn to Page 54 of your
25 report, Paragraph 169?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 159

1 A Yeah.

2 Q Your report says that in another
3 step of the transaction, Colbrook loaned the
4 same shares to DDC Cayman.

5 Right?

6 A Yes.

7 Q And we discussed earlier that
8 shares in Denmark are dematerialized.

9 Right?

10 A Correct.

11 Q The shares exist electronically in
12 book entry.

13 Right?

14 A Real shares you're talking about?
15 Yes, they would exist in dematerialized and
16 book entry form at the -- both at the issuer
17 and the central security depository.

18 Q So you don't know that Colbrook
19 loaned the same shares to DDC Cayman, right?
20 That's something you're surmising?

21 A Well, I think you have to look at
22 the flow, and the same amount of shares is
23 moving almost simultaneously throughout the
24 structure. And so it doesn't really matter
25 to me whether they're the -- you know, like

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 160

1 dollars are fungible.

2 I don't really care if it was the
3 exact same shares specifically or not. The
4 structure is moving the same shares around in
5 a circular nature and DDC Cayman ends up
6 getting back the shares that it purportedly
7 sold in the first place that it never had.

8 So that when I say "same shares,"
9 if you look at the totality of what's going
10 on, yes, I think the substance is that's
11 exactly what happened.

12 Q But that's your surmise, right?

13 You don't know that?

14 A Well, that's my opinion. I mean, I
15 haven't seen evidence to -- otherwise.

16 Q And you say you don't care if it
17 was the exact same shares or not.

18 Right?

19 A It doesn't -- doesn't matter to me
20 in that sense. I'm looking at the flow and
21 the fact that the 600,000, the same pricing
22 all the way through, and it moves in stepped
23 fashion. This is almost like a step
24 transaction.

25 It's all preplanned, preapproved,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 161

1 and that's what I was pointing out. That's
2 the purpose of explaining so the judge and/or
3 jury can understand, that this is just a
4 circle.

5 Q Let's look at Page 55, Figure 14 in
6 your report.

7 A Okay.

8 Q This is an e-mail discussing a
9 stock loan.

10 Right?

11 A Correct.

12 Q Did you review Colbrook's account
13 statements at financial institutions other
14 than Solo?

15 A I didn't see any account statements
16 in the record for Colbrook outside of Solo,
17 so I would have -- my recollection is I would
18 have looked at what is in the record and that
19 would have been Solo account statements.

20 Q You didn't see any Colbrook account
21 statements at financial institutions other
22 than Solo.

23 Correct?

24 A I would have to go back and
25 double-check. I mean, there were literally

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 162

1 millions of documents in this case.

2 And sitting here today, I can't
3 recall each specific one, but nothing is
4 coming top of mind that there would have been
5 an external account statement for Colbrook
6 showing any stock owned.

7 Q If such documents existed, is that
8 something you would have wanted to see?

9 A If there were documents that showed
10 Colbrook actually had a position in Carlsberg
11 at 600,000 shares and they put those into the
12 Solo transaction, yes, I would have -- that
13 would have been a document that I would like
14 to see.

15 Q What if they had 600,000 shares but
16 didn't, as you say, put it into the Solo
17 transaction? Is that something that you
18 would want to see?

19 A It would -- it certainly would be
20 interesting if those shares existed
21 somewhere. I haven't seen any evidence to
22 suggest that they existed.

23 Q The document -- let's go back to
24 Figure 14, Page 55 of your report.

25 That document is, again, a document

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 163

1 from the Elysium documents.

2 Right?

3 A Yes.

4 Q And there's nothing on the face of
5 this document that you have shown here in
6 Figure 14 that reflects that it was sent to
7 any U.S. pension plan.

8 Right?

9 A The only reason I'm hesitating to
10 answer your question, something in the back
11 of my mind, I thought Martin Smith actually
12 owned some pension plans. But I'd have to go
13 back and check.

14 But this was sent to Martin Smith
15 at Colbrook. I know there's crossover
16 between some of the people involved at the
17 counterparties and some of the people that
18 also had pension plans.

19 I'd need to go back and
20 cross-reference that.

21 Q But it didn't go to -- to the
22 extent it went to somebody named Martin
23 Smith, it went to a Colbrook Limited address,
24 not a U.S. pension plan address.

25 Right?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 164

1 A Yes, but that wasn't the question
2 you asked. So just to clarify, yes, this is
3 going to a Colbrook e-mail address.

4 You asked me, in your earlier
5 question, do I know if this e-mail went to
6 anybody at a U.S. pension plan, I think was
7 your question, and that's what I wanted to
8 clarify.

9 Q But these documents reflected in
10 Figures 9 and 14, neither one of them went to
11 a U.S. pension plan.

12 A Right?

13 A Well, let me just go back and look
14 at what 9 was.

15 MR. WEINSTEIN: Objection, asked
16 and answered.

17 A (Witness reviewing.)

18 Q Let me ask you a different
19 question.

20 Neither of the documents reflected
21 in your Figures 9 and 14 went to Bernina, did
22 they?

23 A I don't see anything that
24 would -- on the face of it that would
25 indicate whether they did or not. I don't

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 165

1 know one way or another where these documents
2 went, so I can't say.

3 Q And in order to determine what you
4 called the "closed loop," you needed to see
5 these documents, didn't you?

6 A Correct. These were the steps of
7 the purported transaction.

8 Q Mr. Dubinsky, you're not an expert
9 in trade settlement operations.

10 A Right?

11 A That is correct. I wouldn't
12 consider myself an expert in trade
13 settlement.

14 I do have some experience with it,
15 but I'm not being proffered here and I
16 understand somebody else is dealing with
17 trades and settlement issues.

18 Q Do you understand what "net
19 settlement" is?

20 A As a general concept, yes.

21 Q It's a -- two or more transactions
22 that offset each other in settlement.

23 A Is that right?

24 A Well, I think that's a very general
25 description. You know, it's a -- very

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 166

1 open-ended. I think I describe in my -- I
2 think it's in the reply report -- I'd have to
3 go look either in the rebuttal or reply
4 report what my understanding of the net
5 settlement is.

6 Q You can't describe what your
7 understanding of net settlement is without
8 looking at your reply report, sir?

9 MR. WEINSTEIN: Objection to form.

10 A No, I didn't say that. I
11 said -- you asked me is -- do I agree with
12 your definition. I said your definition is a
13 very general definition.

14 I provided what my understanding
15 was in one of my reports.

16 Q Okay. Why don't you provide it to
17 us now.

18 What's your understanding of what
19 "net settlement" is?

20 A Well, my general understanding of
21 net settlement is that a buyer and seller
22 within the same brokerage firm, same
23 custodian, if the shares exist and one is
24 selling and one is buying, that in general,
25 there can be an offsetting book entry at the

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 167

1 broker because the shares are already sitting
2 at the -- either custodian or sub-custodian
3 and don't need to move.

4 So that's my understanding, in
5 general, of what a net settlement -- how that
6 would work.

7 Q So, in your understanding, the
8 shares have to be held at the custodian or
9 sub-custodian for a net settlement to occur?
10 Is that your testimony?

11 A Again, that's my general
12 understanding of when a net settlement would
13 occur. There may be nuances to that.

14 Again, I'm not an expert in net
15 settlement.

16 Q Okay. Let's go to your reply
17 report at Page 8. It's Exhibit 5202.

18 A Okay.

19 Q At Heading B, you say, "In order
20 for a custodian to be able to internally net
21 settle offsetting trades, the shares have to
22 actually exist."

23 Do you see that?

24 A Yes.

25 Q What do you mean by "exist?"

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 168

1 A Common -- common word, of the
2 meaning of it. The shares have to be there.

3 So the custodian has to have the
4 shares in some sort of record format. In the
5 days before they were dematerialized, they
6 would have been a paper share format.

7 Once they dematerialized, they'd be
8 in record format so there would be an
9 electronic record. But they need to actually
10 have settled and be at that custodian.

11 There needs to be a record of it.

12 Q Do you have your reply report in
13 front of you still?

14 A I do, yeah.

15 Q Okay. And starting at Paragraph 26
16 going to 27, 28, and 29 on the next page, you
17 discuss net settlement.

18 Right?

19 A Correct.

20 Q And in all of this discussion, you
21 have one footnote there?

22 A Correct.

23 Q And that footnote is a citation to
24 Dr. Carr's rebuttal report.

25 Right?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 169

1 A Correct.

2 Q And you don't cite any literature
3 about market operations or any source
4 whatsoever for your discussion of net
5 settlement.

6 Is that a fair statement?

7 A In the -- in this section, that's
8 correct, yes. I don't.

9 Q Okay. Let's go back to Page 8,
10 Paragraph 27. I'm going to point you to the
11 second sentence there where you say, "Under a
12 hypothetical scenario in which there is proof
13 that the shares did exist and were present at
14 a custodian, I agree."

15 You're referring back, obviously,
16 to the prior sentence?

17 A Correct.

18 Q And so you don't dispute that net
19 settlement is, of course, possible in certain
20 situations.

21 Correct?

22 A That's correct.

23 Q And that brokers or custodians can
24 settle trades on a net basis.

25 Right?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 170

1 A As a general concept, that's
2 correct.

3 Q Okay. If you go to the bottom of
4 Page 8, just read Paragraph 28 to yourself,
5 please.

6 A (Witness reviewing.)

7 Okay.

8 Q And in the last sentence of that
9 paragraph, you say, "In other words, the
10 sub-custodian cannot net settle internally if
11 the selling party to the transaction never
12 actually possesses the shares; there would be
13 nothing to, quote, net settle, closed quote."

14 Do you see that?

15 A Yes.

16 Q And again, you don't cite anything
17 to support that statement in this paragraph,
18 do you?

19 A That's correct.

20 Q Did you -- before you filed this
21 reply report, did you read any sources about
22 net settlement?

23 A Not that I recall. Just my general
24 understanding of how net settlement would
25 work.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 171

1 Q Did you read any sources about
2 internalized settlement?

3 A No.

4 Q Let's go to Tab 5114 of your
5 binder. It's toward the front of the binder.

6 A I've got it.

7 Q You've heard of the European
8 Securities and Markets Authority, ESMA.

9 Right?

10 A Yes.

11 Q And the document you have in front
12 of you is titled, "Guidelines on Internalized
13 Settlement Reporting Under Article 9 of
14 CSDR."

15 Right?

16 A Correct.

17 Q Have you seen this before?

18 A Doesn't look familiar to me.

19 Q Okay. It was cited in Dr. Carr's
20 reply report at Page 32, Footnote 92.

21 A All right. Let me --

22 Q Did you look at -- sorry. Go
23 ahead.

24 You can look at that citation.

25 A Sorry. Just the reply report, you

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 172

1 said?

2 Q Dr. Carr's reply report at Page 32,
3 at Footnote 92.

4 A (Witness reviewing.)

5 Okay. I see where he references
6 it.

7 Q Okay. Did you review sources like
8 this in Dr. Carr's reply report when you were
9 reviewing his report?

10 A No, I did not.

11 Q Let's turn to Page 3. Let's go
12 back to Exhibit 5114 and go to Page 3.

13 Okay?

14 A Okay.

15 Q And I'm going to point you to
16 Paragraphs 10-A and 10-B.

17 10-A says, "A settlement
18 internalizer receives a settlement
19 instruction from a client regarding
20 settlement of a securities transaction and
21 the settlement instruction is not forwarded
22 in its entirety to another entity along the
23 holding chain."

24 And then, "B" says, "Such a
25 settlement instruction results or are

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 173

1 supposed to result in a transfer of
2 securities from one securities account to
3 another in the books of the settlement
4 internalizer without any external parallel
5 securities movement along the holding chain."

6 Do you see that?

7 A Yes, I see that.

8 Q This description of internalization
9 reflects that in some context the settlement
10 instruction may result without involving
11 external parties in a holding chain.

12 Correct?

13 A Again, this is the first time I'm
14 seeing this document. I haven't gone through
15 it. I'm not a -- I'm not professing to be an
16 expert in net settlement.

17 So without going through this and
18 trying to decipher it, I don't know. I mean,
19 it says what it says and you read it.

20 Q You don't know whether or not it
21 reflects that in some context, settlement may
22 occur without any external parallel
23 securities movement along the holding chain?

24 A That's what it seems to indicate,
25 under certain circumstances. I don't know,

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 174

1 you know, all the nuances of when that would
2 occur.

3 Q So would you agree with me that a
4 sub-custodian's records in this context of
5 settlement may not show any movement in
6 shares?

7 A Again, I can't interpret this. I
8 know there's another expert in the case
9 that's dealing with trading issues.

10 I do note that it says, "from one
11 securities account to another in the books of
12 the settlement internalizer," which to me
13 would mean that both of them have an account
14 at that settlement internalizer, and
15 therefore you wouldn't need an external
16 parallel security movement because they're
17 already sitting at the same custodian or
18 sub-custodian.

19 But again, I don't have an opinion
20 on this document.

21 Q Okay. Why don't we go to the next
22 one, then, Paragraph 52?

23 I'm sorry. Exhibit 5223, Tab 5223.

24 MR. BONGIORNO: Which I believe are
25 rules of the London Stock Exchange.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 175

1 (Whereupon the above mentioned was
2 marked for Identification.)

3 A What was the number again? There
4 were several numbers.

5 Q Sorry. 5223.

6 A Okay. I'm there.

7 Q Have you seen this document before,
8 Exhibit 5223?

9 A No, I haven't.

10 Q And again, this was cited in
11 Dr. Carr's reply report at Paragraph 68.

12 A Okay.

13 Q I don't know -- okay. Why don't
14 you turn to Page 61 of the document?

15 A Okay.

16 Q The heading there says "Settlement
17 Clearing of Benefit Rules."

18 Right?

19 A Yes.

20 Q Okay. And then, further in that
21 section, the heading to which I just read to
22 you -- we'll go to Page 68, please?

23 A Okay.

24 Q Do you see where it says -- sorry.
25 Do you see where it says "Net

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 176

1 Settlements Effect of Settlement?"

2 A I see where it says that.

3 Q Okay. And then you see a Rule
4 G-5140?

5 A Yes.

6 Q "Obligations: The obligations of
7 the central counterparty party, the clearing
8 member, and the non-clearing member in
9 respect of the trade shall be performed when
10 the net settlement is settled in accordance
11 with the terms of the central counterparty
12 netting service."

13 Then, underneath, it says "Guidance
14 to the Rule," which says, "Under the terms of
15 the central counterparty netting service, a
16 net settlement which results in a zero cash
17 and zero stock position may still be created,
18 settle on ISD, and be time-stamped at the
19 time of settlement. In such case, the
20 relevant central counterparty contracts are
21 performed at the time indicated by the
22 relevant time stamp."

23 Do you see that?

24 A I do see that, yeah.

25 Q This is saying that a net

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 177

1 settlement position -- sorry.

2 This is saying that a net
3 settlement can result in zero cash and a
4 zero stock position.

5 Correct?

6 MR. WEINSTEIN: Objection to form.

7 A Again, this is a lengthy document.
8 This is the first time I've seen this
9 document. I'm not an expert on the London
10 Stock Exchange rules.

11 I haven't gone through this. I
12 think there are a lot of caveats in here. I
13 don't know what the terms of the central
14 counterparty netting service would say.

15 So I really can't opine one way or
16 the other on this.

17 Q Okay. So you're not familiar with
18 this rule.

19 Is that a fair statement?

20 A I haven't seen this before, so no,
21 I'm not familiar with it.

22 Q And it doesn't affect your opinions
23 either way, what this rule may or may not
24 say?

25 A No, it does not.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 178

1 Q Let's go back to your reply report,
2 which is Exhibit 5202.

3 Again, back to Paragraph 27 on Page
4 8.

5 A Okay.

6 Q And you say here that net
7 settlement requires an existing long position
8 of the seller at the custodian.

9 Right?

10 A Where were you reading from?

11 Q I wasn't reading from it directly.
12 But you'd agree with me that it's your
13 opinion that a net settlement requires an
14 existing long position of the seller at the
15 custodian.

16 Right?

17 A Let me just read this for a second.

18 (Witness reviewing.)

19 Q Sure.

20 A (Witness reviewing.)

21 Yes, I say that. It's in the
22 middle of Paragraph 27, that basically, the
23 concept as I understand it, the shares have
24 to already exist at the sub-custodian for the
25 sub-custodian to net settle.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 179

1 So both -- you know, the shares
2 have to be there. You can't net settle
3 something that doesn't already exist on their
4 platform.

5 That's my understanding.

6 Q You don't cite anything to support
7 that in this paragraph, do you?

8 A No, I don't.

9 Q Okay. Let's go to Tab 5123 again.
10 This is a document that's already been marked
11 in the Wade deposition.

12 5123.

13 A Okay.

14 Q Do you see this is a "Statement of
15 Policy, Pillar to Liquidity?"

16 A I see that, yes.

17 Q Do you see that? And underneath
18 it, you see the date, and then you see "Bank
19 of England?"

20 A Yes.

21 Q Okay. Have you seen this document
22 before?

23 A I have not.

24 Q And again, this is a document that
25 was cited in Dr. Carr's rebuttal report at

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 180

1 Page 49, Paragraph 117.

2 Go to Page 10 of the document and
3 look at Paragraph 4.19.

4 A (Witness reviewing.)

5 Q Are you there?

6 A Yeah.

7 Q The first sentence of this,
8 Paragraph 4.19, "Internalization: If a PB
9 has two clients that are taking opposite
10 positions on the same asset (one long, the
11 other short) the PB may internally net these
12 amounts to avoid having to fund the positions
13 elsewhere: Client short position is
14 therefore funding the client long position."

15 Do you see that?

16 A Yes, I see that.

17 Q Would you agree that this document
18 from the Bank of England says here that a
19 client's short position can fund a client
20 long position?

21 Right?

22 A Under the scenario that 4.19 is
23 setting forth, that the "PB" -- I assume that
24 means "principal broker." I don't know where
25 there's -- I guess it's the "prime

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 181

1 brokerage" -- has two clients taking opposite
2 positions on the same asset, then the prime
3 brokerage may internally net these amounts.

4 So that's what it says.

5 Q And it says that the prime broker
6 can avoid having to fund the positions
7 elsewhere.

8 Right?

9 A That's what it says, yeah, which
10 would make sense if the --

11 Q That means --

12 A If the position is already there at
13 the prime broker, then they don't need to go
14 external to source it somewhere else. It's
15 already there and they can, according to
16 this, internalize and offset.

17 Q It doesn't say if the position's
18 already there in Paragraph 4.19, does it?

19 A Well, I think it's certainly -- I
20 mean, you're asking me to interpret this.
21 This is the first time I have seen it. I
22 haven't gone through this whole document.

23 I think, to me, implicit in that is
24 when it says if the prime brokerage has two
25 clients that are taking the opposite

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 182

1 positions on the same asset, to me, implicit,
2 it means that -- to me, anyway, that they
3 would be at the prime brokerage.

4 It wouldn't make sense to me
5 otherwise. But that's just the way I'm
6 interpreting it.

7 Q Okay. But you're not an expert
8 on this.

9 Right?

10 A No, but you're asking me a lot of
11 questions on it.

12 Q Not too many. Let's go to
13 Tab 5224.

14 MR. BONGIORNO: Mark 5224.

15 (Whereupon the above mentioned was
16 marked for Identification.)

17 Q And this is a page -- I can
18 represent to you this is a page from the
19 SEC's website. We'll mark this as
20 Exhibit 5224.

21 And the heading is "Stock Purchase
22 and Sales: Long and Short."

23 Looking at the second paragraph, it
24 says that "a short position is generally the
25 sale of a stock you did not own."

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 183

1 Do you see that?

2 A Yes.

3 Q And you'd agree, wouldn't you, that
4 short positions generally involve the sale of
5 shares that the seller doesn't own?

6 A In general terms, yes.

7 Q All right. So we've been going for
8 about, I think, 50 minutes now, and now would
9 be a good breaking point for me where I am.

10 A Okay.

11 Q So if you don't mind, we'll take
12 just a short break now.

13 A Sure. Five, ten minutes?

14 Q We'll say ten minutes.

15 MR. BONGIORNO: Marc, is that all
16 right?

17 MR. WEINSTEIN: Yeah, that's good.

18 THE VIDEOGRAPHER: Stand by. The
19 time is 1:28 p.m. and we're going off
20 the record.

21 (Brief recess taken.)

22 THE VIDEOGRAPHER: Stand by. The
23 time is 1:45 p.m. and we're back on
24 record.

25 Q Dr. Dubinsky, we may have spoken

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 184

1 about it earlier today, but are you familiar
2 with the term "beneficial ownership?"

3 A Just in a very general concept.

4 Q So you don't offer any opinions
5 about beneficial ownership.

6 Right?

7 A No. I think it's a legal concept
8 and has many different meanings and different
9 situations, so I haven't issued that type of
10 opinion, no.

11 Q Would you agree with me that
12 beneficial ownership is distinct from
13 questions of economic exposure to a given
14 security?

15 MR. WEINSTEIN: Objection to form.

16 A I think that's -- you're asking for
17 a legal distinction or legal conclusion, so I
18 don't have an opinion on that.

19 Q Would you agree with me that one
20 country's laws might define "beneficial
21 ownership" one way and another country's laws
22 might define it in another way?

23 A I would agree with you, that's
24 possible.

25 Q And would you agree with me that a

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 185

1 country itself might define "beneficial
2 ownership" differently for different
3 purposes?

4 MR. WEINSTEIN: Objection to form.

5 A I would be speculating, but I would
6 assume that there could be different uses of
7 the term "beneficial owner" in different
8 context within a certain country. I'd just
9 assume that there would be.

10 Q Okay. Are you familiar with -- in
11 the U.S., the concept of 13-D reports?

12 MR. WEINSTEIN: Objection to form.

13 A I've heard of them.

14 Q Just a level set here, reports that
15 require a party that has more than 5 percent
16 beneficial ownership to file a report.
17 That's what I'm referring to.

18 Okay? Does that sound familiar to
19 you?

20 A It does, yes.

21 Q Okay. Will you go to Tab 5228 of
22 your binder, which is a copy of a federal
23 regulation?

24 MR. BONGIORNO: Mark 5228.

25 (Whereupon the above mentioned was

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 186

1 marked for identification.)

2 A Okay. I'm at that tab. It's very
3 small to read.

4 Q Okay. If you look at A-1 and A-2
5 under this regulation, it says that
6 "beneficial ownership includes anyone who has
7 voting power or investment power."

8 Do you see that?

9 A Under A-1? Yeah. Let me just read
10 the lead into this.

11 Q Sure.

12 A And again, you know, I'm not a
13 lawyer and you're asking me to interpret --
14 this is -- you know, from the U.S. code.

15 (Witness reviewing.)

16 Okay. Yeah. So Number 1 says,
17 "Voting power, which includes the power to
18 vote or to direct the voting of, such
19 security," and then it says, "and/or
20 investment power, which includes the power to
21 dispose or to direct the disposition of such
22 security."

23 Q Okay. And if you go down to D-1?

24 A B-1?

25 Q I'm sorry. "D."

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 187

1 A As in "delta?"

2 Q "D" as in "delta," yeah.

3 There it says, and you can

4 obviously read the whole thing, that someone
5 can be a beneficial owner "if they have the
6 right to acquire beneficial ownership of such
7 a security within 60 days."

8 And I'm going to ask you if you see
9 that, and take a chance to -- take the
10 opportunity to read it and ask if you see
11 that.

12 A (Witness reviewing.)

13 In Delta-1? Delta-1, little "I?"

14 Q Yes.

15 A I'm going to -- I'm really having
16 trouble even reading it. I've got my glasses
17 on and I don't see where it says 60 days.

18 Q Well, I'll read it out loud, and
19 see if you can follow along.

20 "A person shall be deemed to be the
21 beneficial owner of a security subject to the
22 provisions of Paragraph B of this rule if
23 that person has the right to acquire
24 beneficial ownership of such security as
25 defined in Rule 13-D-3-A," then there's a

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 188

1 parenthetical, "within 60 days?"

2 A I see.

3 Q Then it goes on to say -- do you
4 see that?

5 A Yes.

6 Q And then it goes on to say,
7 "including but not limited to the right to
8 acquire, through the exercise of an option,
9 warrant, or right." Then it goes on.

10 So you see there where it says an
11 investor, that there -- sorry -- that the
12 right to acquire might exist because the
13 party purchases or has been granted a call
14 option on the stock, right?

15 Is that a fair statement?

16 A Where did you just jump to? I
17 don't see that.

18 Q Well, I just read you the part
19 about through "the exercise with any option."
20 "Any right to acquire through the
21 exercise of any option."

22 Do you see that language?

23 A Yes, I see that.

24 Q Okay.

25 A Then it says "warrant or right." I

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 189

1 see that.

2 Q Right. And that's a reference to a
3 call option.

4 Right?

5 MR. WEINSTEIN: Objection to form.

6 A Well, I don't know. I mean, you're
7 asking me to interpret this and I'm not a
8 lawyer or an expert on beneficial ownership
9 in that regard. And there's a lot of
10 cross-references to paragraph numbers.

11 I don't know.

12 Q Well, someone who has an option
13 doesn't necessarily have shares at that point
14 in time, right? They just have an option to
15 purchase at a later date.

16 Is that a fair statement?

17 MR. WEINSTEIN: Objection to form.

18 A My answer was, in a general
19 hypothetical, if I have a call option on an
20 equity, I don't necessarily have to own that
21 equity as well.

22 Q So would you agree with me that
23 beneficial ownership does not require shares
24 in every case?

25 MR. WEINSTEIN: Objection to form.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 190

1 A Again, you're asking for a legal
2 conclusion. I'm just not comfortable giving
3 you one.

4 Q So you would agree with me that
5 beneficial ownership is a legal question?

6 A My answer was, in most contexts
7 where I've seen it, it has been a question of
8 law and interpretation of law to apply that.
9 I've seen it in other contexts, but that's
10 generally where I have seen the term.

11 Q Okay.

12 MR. BONGIORNO: I don't have any
13 more questions.

14 Thank you, Mr. Dubinsky.

15 THE WITNESS: Thank you.

16 MR. BONGIORNO: I don't know if
17 anybody else has questions, but I don't
18 have any more.

19 MR. LOPICCOLO: Hey, this is Joe
20 LoPiccolo. Can you hear me?

21 THE WITNESS: Yes, but I can't see
22 who is talking.

23 MR. LOPICCOLO: Oh, wait. Sorry.
24 Let me see if this works. Hold on.

25 (Whereupon a discussion was held

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 191

1 off the record.)

2 EXAMINATION BY MR. LOPICCOLO:
3

4 Q I just have -- so I rep -- I'm with
5 Poulos LoPiccolo P.C. and I represent a
6 number of individuals and pension plans
7 including Roger Lehman and Doston Bradley.

8 A Okay.

9 Q I just have a couple of questions
10 and I'm going to refer to a document that you
11 cited to in your initial report. I don't
12 know if you have -- you just cited to the
13 Bates numbers, so I don't know if you have
14 those handy.

15 A I don't. I have my report, but I
16 don't have any of the backup to the report
17 with me.

18 MR. LOPICCOLO: Marc, do you want
19 me to e-mail you the specific document?
20 Would that make it easier if I'm going
21 to refer to it?

22 MR. WEINSTEIN: Why don't we do
23 this. How many documents do you have,
24 Joe?

25 MR. LOPICCOLO: It's just one.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 192

1 MR. WEINSTEIN: Okay. Why don't we
2 take a five-minute break, e-mail it to
3 me, and we'll try to print out copies
4 quickly.

5 MR. LOPICCOLO: Okay. That makes
6 sense.

7 MR. WEINSTEIN: Okay.

8 THE VIDEOGRAPHER: Stand by. The
9 time is 1:55 p.m. and we're going off
10 the record.

11 (Brief recess taken.)

12 MR. LOPICCOLO: Mark 5229.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 THE VIDEOGRAPHER: Stand by. The
16 time is 2:10 p.m. and we're back on
17 record.

18 Q Mr. Dubinsky, again this is Joseph
19 LoPiccolo with the firm Poulos LoPiccolo P.C.
20 I represent a number of defendants and
21 associated pension plans, including Roger
22 Lehman and Boston Bradley.

23 So I just have a couple of
24 questions. And we pulled one of the exhibits
25 or one of the -- one of your cites in your

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 193

1 initial report.

2 And it's cited -- you cite it at
3 Footnote 299. It's Bates stamped
4 Elysium 053115871.

5 A Correct.

6 MR. WEINSTEIN: Actually, I think
7 you said two "1s" in the middle there.

8 MR. LOPICCOLO: Oh, did I?

9 A 05315871.

10 Q Yeah, that's right. And we'll mark
11 this as Exhibit 5229.

12 So at Paragraph 243 of your initial
13 report, you state, "In 2015, the flow of the
14 payments" -- and again, we're referring -- it
15 has a subheading of "Lehman Bradley Tucci and
16 Crescenzo."

17 A Yes.

18 Q Do you see that? Are you there?

19 A I am.

20 Q Okay. And it says, "In 2015, the
21 flow of the payments was generally as
22 follows. The plans would pay Ganymede, which
23 would in turn, transfer funds to Elysium
24 Global Limited, a BVI entity controlled by
25 Shah."

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 194

1 And that's where you have
2 Footnote 299 and you cite to what we've
3 marked as 52 -- Exhibit 5229.

4 A Correct.

5 Q Okay. Did you create this
6 document?

7 A No, I did not.

8 Q Do you know who did?

9 A I do not.

10 Q How did you get it?

11 A It was in the Elysium documents.

12 When I was searching through the Elysium
13 database looking for flowcharts, this is one
14 that came up.

15 Q Okay. And with respect to
16 that -- to the statement I just read in
17 Paragraph 243, is this -- is this your main
18 support for that statement, this document
19 5229?

20 A No. I think this was just showing
21 the directional payments.

22 I think there are documents that I
23 cite to in the report, in this section and
24 others, where Ganymede would have an
25 agreement with the plans to provide services.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 195

1 Ganymede would invoice for those purported
2 services, and money was taken out of the Solo
3 accounts when the reclaim payments actually
4 came back in, when cash actually was
5 received, and things were carved up in that
6 regard.

7 Q Okay. So with respect to your
8 reliance on this flowchart, did you analyze
9 the financial records of Ganymede?

10 A Whatever was available. I think
11 there were some financial records of Ganymede
12 that I've looked at that showed -- I'd have
13 to go back and look, but I recall there was
14 very little capitalization of Ganymede. I
15 know I've looked at formation documents.

16 It would have been cited in the
17 report.

18 Q Did you look at -- and if we just
19 stick on, let's just say the year 2015 where
20 this statement is made in Paragraph 243 of
21 your report, did you look at the account
22 statements, any and all account statements of
23 Ganymede during that year?

24 A Let me just see if there are any in
25 the footnote. I know we've had a lot of the

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 196

1 invoices. Let's see.

2 (Witness reviewing.)

3 I think this section, in going
4 through this, was predicated on invoices that
5 I saw. I don't believe I had the Ganymede
6 account records, bank account records.

7 I'd have to go back and look at
8 that.

9 Q Okay. And so would you -- so if
10 you didn't have the account records, would
11 you be able to confirm all of the credits and
12 debits of Ganymede bank accounts during that
13 time period?

14 A Well, if I had the bank records, I
15 would have gone through that. And again,
16 sitting here, I just don't recall.

17 I think I had looked at the
18 invoices that were issued by Ganymede and
19 then the payments from those, other invoices,
20 because I recall there were other entities
21 that invoiced Ganymede for purported
22 services, and I talk about that in this
23 section.

24 But short of that, I don't -- let
25 me just -- let me just look one more time.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 197

1 (Witness reviewing.)

2 I'd have to go back through the
3 report and see where I referenced any bank
4 statements from Ganymede, which I -- sitting
5 here today, I can't do because I don't have
6 it electronically.

7 Q You don't recall if you analyzed
8 the bank statements of Ganymede?

9 A There were a lot of documents in
10 this. Let me just see.

11 (Witness reviewing.)

12 I don't recall seeing -- you know,
13 I just can't answer you right now. I'd have
14 to go back through the report, the whole
15 report, and see.

16 Q What about, then -- and if you're
17 looking at that flowchart, the next entity,
18 Elysium Global Limited, did you analyze any
19 bank statements -- and we can just
20 concentrate on 2015 for now -- of that
21 entity?

22 A I don't believe so.

23 Q All right. What about if we now
24 cross over to the right-hand side? We'll
25 start at the top.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 198

1 Saheed Investments, did you analyze
2 any bank statements or financial records of
3 that entity?

4 A Not that I recall, no.

5 Q And what about Fire Capital One?
6 Did you analyze any bank statements or
7 financial records of that entity?

8 A No. Again, I don't recall those
9 existing in the data.

10 Q Okay. The next one is Parla
11 Global.

12 Did you analyze any financial
13 records or bank statements of that entity?

14 A I don't recall seeing the bank
15 statements for that entity.

16 Q Okay. And the next one is
17 Philo Holdings.

18 Did you analyze any financial
19 records or bank statements of that entity?

20 A No, I don't recall seeing any bank
21 statements for that entity.

22 Q Okay. And the next one is Elysium
23 Global Trading Limited.

24 Did you analyze any financial
25 records or bank statements of that entity?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 199

1 A I don't recall seeing any for that
2 entity, either.

3 Q And the next one is Quantmetrics
4 Multi-Strategy Fund. In parenthesis, it says
5 "U.K."

6 Did you analyze any financial
7 records of bank statements of that entity?

8 A I don't recall seeing bank
9 statements in the production for that entity.

10 Q Okay. And then, the last one on
11 the chart is Elysium Global (Dubai) Limited.

12 Did you analyze any financial
13 records of bank statements for that entity?

14 A Again, I don't recall seeing any
15 bank statements for that entity.

16 Q Okay. Are you aware that pension
17 plans that you analyzed submitted reclaim
18 applications to jurisdictions other than
19 Denmark?

20 A I know there was another series of
21 transactions that I wasn't involved with, if
22 that's what you're talking about, the ED&F.

23 Q No, not ED&F. Let's just say, if
24 we refer to -- and I think you -- in
25 Paragraph 243, you refer to the Lehman plans?

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 200

1 A That's 243.

2 (Witness reviewing.)

3 I mean, I describe the Lehman
4 plans, I think, earlier on in the --

5 Q I think --

6 A -- in the report. There's a whole
7 discussion in the "Factual Background"
8 section of the Lehman plans and who was
9 involved.

10 Q Right, right.

11 So if we just talk about the Lehman
12 plans?

13 A Okay.

14 Q Are you aware of whether those
15 plans submitted reclaim applications to
16 jurisdictions other than Denmark?

17 A I am not.

18 Q Did you review Mr. Lehman's
19 deposition?

20 A I believe that was one of the
21 depositions that I've read, yes. Let me just
22 see if it's on the list.

23 (Witness reviewing.)

24 Yes, his August 2021 deposition.

25 Q And in -- at Paragraph 244 of your

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 201

1 initial report, you say -- you note here,
2 "Payments to Lehman were typically made to
3 one of two entities owned and controlled by
4 Lehman." And then you have "Volaris LLC or
5 First Alton, Inc."

6 Do you see that?

7 A Yes.

8 Q And Volaris LLC, Mr. Lehman had a
9 pension plan that went by the same name.

10 Is that correct?

11 A I'd have to go check, but it
12 wouldn't surprise me.

13 Q Well, in -- are you aware that
14 Roger Lehman testified that his Volaris
15 pension plan transacted in Belgian securities
16 in addition to Danish securities?

17 A I don't recall specifically.

18 Q Well, at page -- and I'm just going
19 to refer to his deposition and I'll quote
20 it -- it's at Page 256 to 257 of Mr. Lehman's
21 deposition.

22 "Question: Did the Volaris Pension
23 Plan transact in Belgian securities as well
24 as Danish securities?

25 Answer: To the best of my

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 202

1 knowledge, they did.

2 Question: Did the Volarius plan
3 also submit refund applications to Belgium.

4 Answer: To the best of my
5 knowledge they did, yes.

6 Question: Was the trading
7 instruction the same as what we've gone
8 through today, other than using Belgian
9 securities?

10 Answer: I believe so for the most
11 part."

12 A Okay.

13 Q Do you recall reviewing documents
14 that reflected potential reclaim applications
15 to other jurisdictions?

16 A I do not.

17 Q So is it -- if there were -- if
18 Mr. Lehman is correct and there were reclaim
19 applications to jurisdictions other than
20 Denmark, is it possible that this -- however,
21 you referred -- the flow of payments could
22 include tax receipts not just from Denmark
23 but from other jurisdictions?

24 MR. WEINSTEIN: Objection to form.

25 A I don't recall seeing anything to

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 203

1 indicate that. I recall seeing invoices for
2 services related to -- I'd have to go back
3 and look, but I thought they referenced
4 specifically the Danish transactions.

5 But there were a lot of documents,
6 so I'd have to go back and look.

7 Q If we look at the next -- so if you
8 look at Paragraph 244 of your initial report?

9 A Yeah.

10 Q You state that -- let me make sure
11 I'm on the same -- let me make sure I'm on
12 the same -- the right paragraph here.

13 I know. It's 245, 245.

14 I'm sorry.

15 A Okay.

16 Q You say, "For plans in which Lehman
17 himself was the participant, Solo's records
18 suggest that Lehman was paid 15 percent of
19 the refunds paid by SKAT."

20 Do you see that?

21 A Yes.

22 Q You see that there?

23 How did you -- how did you get to
24 that number, 15 percent?

25 A If you look at the footnote, it's

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 204

1 33 million divided by 220 million is
2 15 percent.

3 Q Okay. So -- right. I see that. I
4 see the footnote.

5 So to get to 15 percent, are you
6 assuming that the 33 million paid to
7 Mr. Lehman was all reclaims -- was all for
8 reclaims paid by SKAT?

9 A That's the assumption, yes, that
10 would be.

11 Q And so would it affect your opinion
12 pertaining to this percentage that you came
13 up with there if part of the 33 million that
14 was paid to Mr. Lehman was for reclaims paid
15 by other foreign entities?

16 A Yes, to the extent -- yeah, it
17 would -- it would affect the percentage. Let
18 me just look at the lead-in to this whole
19 section. Give me a second here.

20 (Witness reviewing.)

21 Yes, because I focused on the Solo
22 trades from the Danish securities. So to the
23 extent some of that money was from tax
24 reclaims that weren't for the purported
25 Danish securities, it would affect that

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 205

1 percent, yes.

2 Q How would it affect that percent?

3 A It would go down. It could
4 potentially go down.

5 MR. LOPICCOLO: I think that's all
6 I have.

7 THE WITNESS: Okay.

8 MR. WEINSTEIN: Yeah, just want to
9 check. Is that it on the defense side?

10 THE WITNESS: I will read and sign.

11 MR. WEINSTEIN: Seems that way.

12 Mike and Jose, can you take us off the
13 record?

14 THE VIDEOGRAPHER: Sure thing.

15 Stand by. The time is 2:26 p.m. and
16 we're going off the record.

17 THE COURT REPORTER: Recapping
18 orders, Wilmer Hale, original, two
19 realtime hookups, rough draft, two day
20 final.

21 Hughes Hubbard, copy sale, six
22 realtime hookups, rough draft, two day
23 final.

24 Hanamirian, regular copy sale,
25 realtime hookup.

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 206

1 Kostelanetz, regular copy sale.
2 K&L Gates, regular copy sale.
3 Dewey Pegno, one realtime hookup,
4 rough draft, regular copy sale.
5 Moore Tax Law Group, regular copy
6 sale.

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 207

1 C E R T I F I C A T E

2

3 I, MICHAEL FRIEDMAN, a Certified Court
4 Reporter and Notary Public, qualified in and for
5 the State of New Jersey do hereby certify that
6 prior to the commencement of the examination BRUCE
7 DUBINSKY was duly sworn by me to testify to the
8 truth the whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing
10 is a true and accurate transcript of the testimony
11 as taken stenographically by and before me at the
12 time, place and on the date hereinbefore set forth.

13 I DO FURTHER certify that I am neither a
14 relative of nor employee nor attorney nor counsel
15 for any of the parties to this action, and that I
16 am neither a relative nor employee of such attorney
17 or counsel, and that I am not financially
18 interested in the action.

19

20



21

22 MICHAEL FRIEDMAN, CCR of the
23 State of New Jersey
24 License No: 30X100228600
25 Date: March 30, 2022

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 208

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LAWYER'S NOTES

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CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 209

1 DEPOSITION ERRATA SHEET

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6 DECLARATION UNDER PENALTY OF PERJURY

7 I declare under penalty of perjury
8 that I have read the entire transcript of
9 my Deposition taken in the captioned matter
10 or the same has been read to me, and
11 the same is true and accurate, save and
12 except for changes and/or corrections, if
13 any, as indicated by me on the DEPOSITION
14 ERRATA SHEET hereof, with the understanding
15 that I offer these changes as if still under
16 oath.

17

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21 Signed on the _____ day of
22 _____, 20____

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BRUCE DUBINSKY

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 210

1 DEPOSITION ERRATA SHEET

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25 BRUCE DUBINSKY

CONFIDENTIAL
Bruce Dubinsky - March 29, 2022

Page 211

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